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UBI SUMUS? QUO VADIMUS?: CHARTING THE COURSE OF MARITIME INTERCEPTION OPERATIONS

by

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A paper submitted to the Faculty of the Naval War College in partial satisfaction of the requirements of the Department of Advanced Research.

The contents of this paper reflect my own personal views and are not necessarily endorsed by the Naval War College or the Department of the Navy.

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EXECUTIVE SUMMARY

There is little, if any, doubt that maritime interception operations (MIOs) are a likely part of future responses to aggression and other violations of international law. Analysis of the history, legal justification, and the three actual cases of MIOs reveals their standards, norms, and legal bases, and produces lessons learned, from which proposed "workarounds" to improve the effectiveness of future MIOs can be made.

Historically, MIOs derive from blockade, visit and search, pacific blockade, and quarantine, and its standards and norms reflect this derivation. Legally, MIOs are justified on one of two bases: the inherent right of forcible self-help under customary international law, or the United Nations Charter. The analysis of the three cases reveals operations that are multilateral in name, but which, in practice, are merely a loose assembly of national efforts toward the same goal. This has made for difficulty in interoperability. Analyzing key aspects of any such operation, including command and control, rules of engagement, and communications, indicates that there is room for significant improvement to enhance interoperability and effectiveness of future MIOs.

Recommendations for improvement are premised on the view that the United States should lead alliance and other friendly nations into more effective interoperability through conferences, shared publications, training, and exercises.

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I decided upon Maritime Interception Operations as my topic when I learned of problems associated with them in the Naval War College elective course in Ocean Law and Policy for the Operational Commander, taught by my dual advisors, Professor Richard J. Grunawalt and Captain Ralph Thomas, JAGC, USN, and Commander Peter Mitchell, USCG. Professor Grunawalt and Captain Thomas not only encouraged my commitment to the Advanced Research Program, but committed themselves to it. Without their faithful support, keen insights, and committed guidance, I could never have begun, much less completed this paper.

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UBI SUMUS? QUO VADIMUS?[1]: CHARTING THE COURSE OF MARITIME INTERCEPTION OPERATIONS

CHAPTER I

INTRODUCTION

A. The Problem and the Analysis

It is commonly said that what is past is prologue,[2] indicating that what has occurred before is introductory to what will occur in the future. It is also commonly said that those who fail to remember the past are condemned to repeat it,[3] which, of course, implies that by studying the past it is sometimes possible to avoid its mistakes in the future. Assuming the correctness of these two propositions, the purpose of this paper is to study the prologue, that is, the history, legal justification, and the three actual cases of maritime interception operations conducted thus far, learn the lessons of this past, and provide recommendations to avoid the mistakes of the past in future operations. In other words, and to paraphrase

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[1]John B. Hattendorf, ed., Ubi Sumus? The State of Naval and Maritime History (Newport, RI: Naval War College Press, 1994), 1. Professor Hattendorf states, at 1: "Navigators need to ask 'Where are we?' [Ubi sumus?] before they can ask 'Where are we going?' [Quo vadimus?]."

[2]The Tempest, 2.1.261, quoted in John Bartlett, Familiar Quotations: A Collection of Passages, Phrases, and Proverbs Traced to Their Sources in Ancient and Modern Literature, 16th ed., ed. Justin Kaplan (Boston: Little, Brown and Company: 1992), 224.

[3]George Santayana, The Life of Reason, vol. I, Reason in Common Sense, quoted in Bartlett's, 588.

Professor Hattendorf, the purpose of this paper is to let us ask, "Where are we?" with respect to maritime interception operations, before asking, "Where are we going?"[4] Once the first question is answered, this paper provides recommendations to shape the answer to the latter question as well.

Throughout much of 1994, the United States and various alliance and coalition partners conducted maritime interception operations in three different parts of the world: against Iraq in the Persian Gulf and Red Sea; in the Adriatic Sea off the coast of the former Yugoslavia; and, in the Caribbean Sea off the coast of Haiti. In fact, the maritime interception operations (MIOs)[5] against Iraq have been in effect for over four years at the time of this writing.

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[4]Hattendorf, Ubi Sumus?, 1.

[5]The term "MIOs" is used throughout for the sake of consistency and clarity. "MIOs" is the term used by most commentators. Another often used term is "MIFOPS," which means maritime interception force operations. This term arose from the identification of the Persian Gulf sanctions enforcement units as a maritime interception force, or MIF. Either term is acceptable, but consistency is desirable.

There is disturbing confusion about the terms relating to maritime interdiction mechanisms, which is the broad term used here to describe all forms of maritime interdiction, including blockade, visit and search, pacific blockade, quarantine, and MIOs. It is as if distinctions did not matter when, if fact, distinctions among the several kinds of mechanisms are crucial in order to ensure legitimacy and predictability of action. By calling MIOs a blockade, a state risks a belligerent response from the target state when MIOs were designed to prevent just such an escalation. See, Chapters I and II, infra. Again, within the general subject of maritime interdiction are the following mechanisms: (1) blockade; (2) visit and search; (3) pacific blockade; (4) quarantine; and, (5) maritime interception. Any of these may be unilateral or multilateral.

Significantly, all MIOs thus far conducted have been multinational, at least in name. Moreover, the combined (i.e., multinational) nature of MIOs is consistent with much of American military history. After all, from the French and Indian Wars and the American Revolution, through two world wars, Korea, and Vietnam, American military forces have operated in combined forces. Combined operations are undoubtedly a fact of future U.S. armed conflicts.[6]

Inherent in any multinational operation are potential stumbling blocks, such as problems with command and control, rules of engagement, and communications. Where MIOs are truly unilateral, these problems simply do not exist except insofar as the nation conducting an operation is ineffective in managing such issues.

While the three MIOs studied here have been multilateral in name, they have been, with the exception the Sharp Guard[7] part of the Adriatic MIOs, national in practice. The key aspects of

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[6]This view was confirmed recently when Secretary of State Warren Christopher and Secretary of Defense William Perry wrote:

> By mobilizing the support of other nations and leveraging our resources through alliances and institutions, we can achieve important objectives without asking American soldiers to bear all the risks, or American taxpayers to pay all the bills. This is a sensible bargain the American people support.

"How to make Foreign Policy Difficult," Providence Journal-Bulletin, 14 February 1995, section A, p. 8.

[7]Unless specifically noted otherwise, the use of "Sharp Guard" denotes all Western European Union (WEU) and North Atlantic Treaty Organization (NATO) operations within the larger Adriatic MIOs.

these operations, such as command and control, rules of engagement, and communications were left to individual nations, even though all nations involved were attempting to accomplish the same mission at the same time in the same place.[8]

In spite of their respective successes, it is clear that the multilateral-in-name/national-in-practice nature of MIOs presents a sometimes dangerous, inefficient, and ineffective way of conducting such operations. As stated in Committee Four (Indian Ocean and Arabian Gulf) of the Twelfth International Seapower Symposium, held at the U.S. Naval War College in November 1993:

> [Maritime interception] is clearly a growth area for naval operations, but there is a lack of standard procedures and training for the forces of different states. Currently, therefore, this subject tends to be chaotic and confusing. . . . [S]tandard basic doctrine and procedures for maritime [interception] are urgently needed.[9]

This paper presents a review of the historical and legal foundations of MIOs, conducts an examination and analysis of the

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[8]There are exceptions to the multilateral-in-name/national-in-practice nature within the operations. For instance, WEU and NATO forces conducted separate, then unified, multilateral operations in the case of the Adriatic MIO. The unified MIOs were named Operation Sharp Guard, and WEU and NATO forces operate under NATO command and control. Therefore, these forces share doctrine and publications, have excellent communications, and share common rules of engagement. At the same time, however, national forces enforcing the economic sanctions against the Federal Republic of Yugoslavia operate under national command and control and do not share, either with NATO forces or with other national forces, the things that make for a truly integrated, interoperable multilateral effort.

[9]Report of Committee Four, Twelfth International Seapower Symposium, by Vice Admiral Michael P. Kalleres, Chairman; contained in John B. Hattendorf, ed., Twelfth International Seapower Symposium, Report of the Proceedings of the Conference 7-10 November 1993 (Newport, RI: Naval War College Press, 1994), 166.

three MIOs identified above, and, finally, offers recommendations for improvement. The analysis consists specifically of the following: (1) a review of the historical roots of MIOs, including blockade, visit and search, pacific blockade, and quarantine, since in those roots are to be found the derivation and norms of MIOs; (2) a review of the legal justifications for the use of MIOs, including both customary international law and the United Nations Charter, since in legal justifications rest the legitimacy of such operations; and, (3) an analysis of the three MIOs to date to identify strengths and weaknesses and offer recommendations for improvement.

The case study analysis focuses on certain aspects critical to any such operation, particularly multinational operations, such as command and control, rules of engagement, and communications, to determine how to work around[10] problem areas inherent in multinational operations. The Sharp Guard part of the Adriatic MIOs is presented as the safest, most effective manner in which to conduct such operations. However, because most MIOs will not normally enjoy the benefits of alliance operations, workarounds for most such operations will be necessary to ensure success. The analysis here examines the difficulties of all three MIOs and provides workarounds by which future non-alliance MIOs can be conducted more safely, efficiently, and effectively. In short, the paper suggests that

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[10]From these two words comes the word "workaround," a noun denoting the methods employed to work around a particular problem.

a close study of the past reveals solutions for past problems so as to avoid them in future operations. Indeed, as Sharp Guard and the proposed workarounds demonstrate, safe, efficient, effective multilateral operations are not only possible, they will be the MIOs of the future.

As a caveat about scope, this paper does not judge the propriety or wisdom of committing U.S. forces to multinational operations. Such political decisions are left to the Navy's political leaders and their critics. This paper does not delve into the more esoteric legal issues that have arisen from past MIOs. For instance, there are issues regarding the legitimacy of maritime interception actions within international straits, the territorial seas of the target state, and the territorial seas of a neutral state, and questions regarding whether the target state can place combat troops onto a merchant ship and declare it a warship not subject to boarding and inspection. These admittedly fascinating questions are left for another day or other students.

B. Background

The United Nations has "authorized more peacekeeping operations since 1988 than in the previous 40 years."[11] As noted above, since 1990 three MIOs have been conducted around the

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[11]Jeffrey I. Sands, Blue Hulls: Multinational Naval Cooperation and the United Nations, CNA Research Memorandum 93-40 (Alexandria, VA: Center for Naval Analyses, July 1993), 1. As Napoleon said, "Peace has been declared . . . what a fix we are in now." It seems that, whereas there have been few old-fashioned wars in the last fifty years, armed conflict is as prevalent as ever.

world; at times simultaneously. Clearly, such operations will be used frequently in the future.[12] The form of MIOs, its standards and norms, is derived from the longstanding rights of belligerents as those rights developed in the customary international law of neutrality. The legal justification of MIOs rests on two possible bases: customary international law pertaining to forcible self-help and the international law of the United Nations Charter, though in each of the three cases

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[12]See, Adam B. Siegel, "Enforcing Sanctions: A Growth Industry," Naval War College Review 46 (Autumn 1993): 130-34. For additional perspective on the future of U.N. actions, see the following: Eugene V. Rostow, "Is U.N. Peacekeeping a Growth Industry?" Joint Force Quarterly (Spring 1994): 100; Boutros Boutros-Ghali, An Agenda for Peace, Report of the Secretary-General pursuant to the statement adopted by the Summit Meeting of the Security Council on 31 January 1992, United Nations General Assembly, U.N. Doc. A/47/277 (17 June 1992)(New York, 1992)/United Nations Security Council, U.N. Doc. S/24111 (17 June 1992)(New York, 1992); Boutros Boutros-Ghali, "Empowering the United Nations," Foreign Affairs 71 (Winter 1992-93): 89-102.

The whole business of peace has become quite complex. There are numerous organizational schemes for the variety of actions that can be taken to either keep or restore peace. Secretary-General Boutros-Ghali, in his Agenda for Peace, set forth a scheme for U.N. actions that used the terms peacekeeping, peacemakeing, peace enforcement, and peacebuilding. Many commentators have chosen to follow this scheme. For example, Jeffrey Sands, in Blue Hulls, relies upon this terminology, as does D.L.W. Sim, in Men of War for Missions of Peace: Naval Forces in Support of United Nations Resolutions, Strategic Research Department Research Report 8-94 (U.S. Naval War College, 1994). Critics contend the terminology, in relying upon the the status of peace at the time of the operation, actually prevents a clear understanding of any given crisis. See, Bruce Pirnie, "A Typology for Peace Operations," Military Science and Modeling, 6 (November 1994): 21. Mr. Pirnie offers a new typology based upon operations, including observation, Interposition, Security, Transition, and Peace Enforcement. If anything is clear from this, it is that nations should agree to a common language on this subject, for, as Clausewitz said, "It is only when we have reached agreement on names and concepts that we can hope to progress with clearness and ease in the examination of the topic, and be assured of finding ourselves on the same platform with our readers."

studied, authority was provided by the United Nations Security Council.[13]

MIOs have become an important weapon in the coercive measures arsenal of both the United Nations and multilateral, or regional, organizations recognized by the United Nations, such as the North Atlantic Treaty Organization, the Gulf Cooperation Council, and the Organization of American States. MIOs are one of the mechanisms, short of war, by which the United Nations or multilateral organizations enforce economic sanctions against an offending state (hereinafter referred to as a "target state"). Generally, they are used to force a target state to conform to international law as interpreted by the United Nations Security Council or multilateral organization. MIOs offer several distinct qualities that encourage their frequent use.

First, because the United States and other significant powers operate navies around the world, and certainly near the historic global flashpoints, such as the Persian Gulf, MIOs offer a rapid response to a developing crisis. This sort of rapid response allows for a demonstration of resolve by the sanctioning body and provides an almost instant deterrent force against further aggression. U.S. doctrine emphasizes that "[b]y

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[13]It should be noted that both the United States and Great Britain, under the customary law of collective forcible self-help, conducted MIOs in the Gulf Crisis prior to U.N. Security Council authorization. See, Chapter V, infra. Further, given deteriorating relations in 1995 with both Russia and the Peoples' Republic of China, the "golden age" of U.N. Security Council unanimity may be ending, and future MIOs may indeed be conducted either unilaterally or by a regional organization.

demonstrating national resolve and maintaining the ability to deal successfully with threats to the national interests, we deter those who would use military power against us."[14] MIOs can demonstrate resolve and provide deterrence effectively, whether unilateral or multilateral.

While demonstrating resolve and providing deterrence, MIOs' second quality is that they are an ideal tool for controlling rather than escalating a crisis. MIOs are remarkably flexible, and can be as forceful as the sanctioning body desires. Therefore, at the initial stages of a crisis, MIOs can be tailored to avoid actual armed exchanges, such as shadowing a targeted freighter instead of using disabling fire against it. This allows the sanctioning body the time and breathing room to negotiate a peaceful resolution. After all, as United Kingdom Ambassador to the United Nations, Sir Crispin Tickell, remarked: "[E]conomic sanctions should not be regarded as a prelude to anything else. Here I obviously refer to military action. Rather, economic sanctions are designed to avoid the circumstances in which military action might otherwise arise."[15]

Third, while MIOs allow for escalation control, they also enable the sanctioning body to control both the flow of arms and other goods into the target state and the flow of products out of the target state. This, of course, provides leverage during

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[14]U.S. Dept. of Defense, Joint Doctrine Capstone and Keystone Primer (Washington, D.C., 1994), 1.

[15]United Nations Security Council. Report, 46th Session, 2933rd meeting, U.N. Doc. S/PV 2933 (1990): 27.

crisis negotiations, and, if negotiations fail, MIOs have placed the forces of the sanctioning body at an advantage since the target state has not improved its war fighting ability, at least with respect to resupply.[16]

MIOs conducted against Iraq, in the Adriatic Sea, and against Haiti have all been successful, even where the larger missions have not. In each case the rapid response of MIOs deterred further aggression or further violation of international law, stanched the flow of trade into and out of the target state,

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[16]Another, more peripheral advantage of MIOs, is that they allow individual nations to participate in multilateral armed forces action as a measure short of "imminent hostilities," which, for domestic legal and political purposes is critical since "imminent hostilities" may act as either a formal (i.e., legal) or informal (i.e., political) triggering event to prevent or control the use of a nation's armed force. In particular, in the United States, the War Powers Resolution requires the President to notify Congress where U.S. armed forces are introduced:

> (1) into hostilities or into situations where imminent involvement in hostilities is indicated by the circumstances;
>
> (2) into the territory, airspace or waters of a foreign nation, while equipped for combat, except for deployments which relate solely to supply, replacement, repair or training of such forces . . . .

50 U.S.C. §§1543-1544 (1973). Where the President admits that his notification is made in accordance with the first part of the War Powers Resolution (i.e., hostilities or imminent hostilities), the law requires the withdrawal of the forces unless Congress otherwise acts. Thus, where U.S. naval forces acting as part of MIOs do not face hostilities or imminent hostilities, the War Powers Resolution is not invoked. Moreover, the use of MIOs may control to some extent the informal political opposition, as manifested in the media, since it is an action designed to force compliance short of war. This, of course, provides for national flexibility in the use of armed forces and allows for a more rapid response to calls from a sanctioning body for enforcement action assistance.

and controlled escalation of the respective crisis.[17] Nevertheless, confusion about the nature and practice of MIOs has led to misunderstanding. Moreover, the nations conducting MIOs encountered numerous difficulties in the operations that led to risk, inefficiency, and ineffectiveness. In other words, past MIOs were successful not because of their multinational-in-name/national-in-practice nature, but in spite of it.

For example, there is an obvious misunderstanding of significant distinctions between MIOs and its ancestors, blockade and visit and search. A brief sampling of some of the more glaring examples demonstrates the problem. President Bush, in August 1990, stated: "There is no point in getting into all the semantics. The main thing is that we stop the oil coming out of there. That's what we are doing."[18] Numerous newspaper articles identified U.S. actions in the Gulf in August 1990 as a blockade. For instance, one Washington Post headline read, "American Blockade is Criticized at U.N."[19] Even the U.S. Navy,

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[17]A rapid response that provides a deterrent, limits trade, and controls escalation is the measure of success for MIOs. While it could be argued that in the Gulf conflict armed hostilities on a significant scale developed, they were in no way the result of the MIOs.

[18]Quoted in A. Kamen, "U.S. Set to Enforce Embargo on Iraq," Washington Post, 13 August 1990, Sec. A, p. 1. To his credit, Secretary of State James A. Baker termed the operation an "interdiction policy," and drew critical distinctions between the pending operation and blockade and quarantine "because under international law those terms can be interpreted as acts of war."

[19]Thomas M. Franck and Faiza Patel, "American Blockade is Criticized at U.N.," Washington Post, 14 August 1990, Sec. A, 1. The New York Times was also guilty of such confusion. For

after four years of conducting and studying such operations, continues to blur certain critical distinctions in international law in this area:

> For [maritime interception operations] to be legal under international law, the provisions must be applied to ships of all nationalities. This means that all ships transiting a defined area, including ships of one's own nation, must be subjected to visit and search. Use of force may be authorized to ensure compliance with visit and search operations.[20]

As will become clear later in this paper, the author of this TACNOTE has confused traditional blockade and visit and search concepts and injected them into maritime interception operations. Such confusion could well lead to the loss of the advantages of MIOs previously discussed. A target nation might well respond to a blockade with a retaliatory action that escalates the crisis, while it might not have responded in such a way to MIOs conducted against it.

There are countless examples of problems with the actual conduct of the operations as well, particularly in the area of the rules of engagement. For example, Rear Admiral John R. Brigstocke, RN, noted the following problem:

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instance, one early article was the following: Michael R. Gordon, "Navy Begins Blockade Enforcing Iraq Embargo," The New York Times, 17 August 1990, p. 10. Even publications close to the military added to the confusion: David S. Steigman, "Naval Blockade One Way to Enforce Embargo," Air Force Times (August 20, 1990) 36A.

[20]U.S. Navy Dept., Maritime Interception Operations, COMSURFWARDEVGRU TACNOTE ZZ005-1-94 (Norfolk, VA: 1994), p. 1. It should be noted that, in spite of this shortcoming, the TACNOTE will likely serve a crucial role in enhancing the effectiveness of U.S. actions in future MIOs. It sets forth detailed blueprints and scripts for such operations, and provides consistency and predictability.

> I was authorized in the Adriatic to provide my sea harriers and the Sea Shua-armed Lynx aircraft to support the NATO embargo operation and to provide surface combat air patrol. The trouble is that when the aircraft took off from my carrier, they were under UK national rules of engagement, which differed markedly from the NATO rules of engagement for the embargo operation. So, in mid-flight, with twenty-two year old, highly inexperienced, gung-ho pilots in the cockpit, those aircraft changed their ROE and changed their commander, halfway between me and flying over the force just off the Montenegrin coast.[21]

Such problems have occurred in all MIOs conducted thus far.

It is clear that MIOs are a large part of the future of maritime economic sanction enforcement. They appear to be the first mechanism to which the United Nations and regional organizations will turn, in a graduated response, when they target aggression and recalcitrance. As stated by Derek Boothby, Head, European Division, Department of Political Affairs, United Nations:

> The present operations in the Adriatic Sea by NATO and the Western European Union, and the naval ships now off Haiti enforcing United Nations Security Council sanctions--all are examples of recent, cooperative maritime operations. And . . . there will indeed be an increasing number of tasks at the lower end of the scale of naval operations. So, in sum, there is a rising need.[22]

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[21]Rear Admiral John R. Brigstocke, RN, statement made during panel discussion, "Cooperative Security at Sea," at the Twelfth International Seapower Symposium conducted at the U.S. Naval War College, Newport, RI, 7-10 November 1993, contained in Hattendorf, ed., Twelfth Seapower Symposium Report, 68.

[22]Derek Boothby, contained in a panel discussion, "Coordination in Combined Maritime Operations," conducted at the Twelfth International Seapower Symposium sponsored by the U.S. Naval War College, Newport, RI, from 7-10 November 1993, and contained in Hattendorf, ed., Twelfth Symposium Report, 99.

Recognizing the rising need, scholars have called for a new "regime" to deal with such operations. For example, Wolfgang Friedmann noted that:

> The legal consequences of . . . a state of intermediacy [between war and peace] are far from clear, but it is arguable that they would, for example, include limited restrictions on the freedom of the seas hitherto recognized only in war but falling short of full-scale blockade.

Wolfgang Friedmann, The Changing Structure of International Law (New York: Columbia University Press, 1964), 271, citing Philip Jessup, "Should International Law Recognize an Intermediate Status between Peace and War?" American Journal International Law 48 (1954), 98.

William O. Miller remarked that:

> [A] basic reorientation is necessary at this time with regard to the law of blockade. If the historic status of "neutrality" can be regarded by some authorities as extinct, why cannot a new status supersede it? If armed confrontations . . . are accepted by the international community as being something other than "war" in the traditional sense solely because the contestants have no intention to engage in war, then some status under law should be accorded to the condition. Within such a new category of law arising from the circumstances of the society it is intended to serve, there would be a place for a new code of maritime war--a code which would reflect 20th century conditions rather than outmoded precedents. . . . It appears to be manifestly clear that such a code would contain rules for the conduct of operations against commerce at sea. Whether such actions be called blockade or "quarantine," commerce warfare will always remain as a tool of sea power, and a workable code for its conduct could only benefit all of world society.

William O. Miller, "Belligerency and Limited War," U.S. Naval War College International Law Studies, vol. 62, Richard B. Lillich and John Norton Moore, eds., Readings in International Law from the Naval War College Review 1947-1977 (Newport, RI: Naval War College Press, 1980), p. 189.

Finally, Professor McNulty concluded:

> In point of fact, it seems ludicrous to contemplate the possibility of any meaningful observance of the "legal" code of blockade in the current or predictable state of political reality. It is clear that the rules of blockade came into existence solely to protect the ordinary sea commerce of neutrals and to regulate the

There is simply no doubt that MIOs will be used in the future, and probably with great frequency. Unilateral action by nations has been superseded, to a large degree, by the U.N. Security Council acting under the U.N. Charter. War, as it was conducted for centuries, will not be a frequent occurrence in the foreseeable future. In its place the Security Council will take action to resolve disputes. This action will likely include the use of MIOs in many scenarios.

> circumstances under which such trade could be interrupted. The rules derive out of a 19th century legal regime--a regime oriented toward regulating the conduct of states in war and peace. But modern international law, of which blockade is a part, no longer seeks to regulate war but to prevent its occurrence.

James F. McNulty, "Blockade: Evolution and Expectation," Lillich and Moore, eds., Readings in International Law, 188.

CHAPTER II

HISTORICAL ROOTS[23]

In the history of the law of neutrality, including blockade and visit and search, and the law of pacific blockade and quarantine, are to be found the roots of MIOs.[24] A brief examination of each of these forms of maritime interdiction will provide the standards for and the shape of the norms of MIOs. Without standards and norms, there would be no predictability in MIOs, a dangerous predicament. While the United States has been on the enforcing side in all three MIOs thus far conducted, this may not always be the case. Imagine the following scenario:

> A revitalized Russia, with a few Warsaw Pact allies in a smaller, yet also revitalized alliance, undertakes MIOs off the coasts of Lithuania, Latvia, and Estonia on the basis of, in its phraseology, the inherent right of individual and collective self-defense. Russia seeks U.N. authorization for the MIOs, but the United States vetoes a Security Council vote on the issue. The United States views the Russian action

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[23]The classic accounts of the law in this area are contained in the following: L. Oppenheim, International Law: A Treatise, 7th ed., ed. H. Lauterpacht, vol. 2 Disputes, War and Neutrality (London: Longmans, Green and Co., 1952), 621-879; C. John Colombos, The International Law of the Sea, 6th rev. ed. (New York: David McKay Company, Inc., 1967), 475-853; and, D.P. O'Connell, The International Law of the Sea, ed. I.A. Shearer, vol. 2 (Oxford: Clarendon Press, 1984), 1094-1158.

[24]Another operation that may have had an influence upon MIOs was the Beira Patrol, though that was a U.N. directed, unilateral British effort. For a brief study, see, Adam B. Siegle, "Naval Forces in Support of International Sanctions, The Beira Patrol," Naval War College Review 46 (Autumn 1992): 102.

> as aggression against the free Baltic nations. In fact, the United States Navy is tasked with escorting not only U.S. flag-merchant vessels, but the ships of any nation carrying critical foodstuffs, heating oil, and humanitarian aid to the Baltic nations. One of the escort ships, USS SAN JACINTO (CG 56), is contacted by Russian warships and is directed to arrange a boarding and inspection by the Russians of all of the ships under its escort.

Given the history of Russia in the Baltic states and recent events in Chechnya, this scenario is not radically improbable. In this, or any similar scenario, would the international community know what to expect of the Warsaw Pact operation? It will be able to predict future actions only if standards and norms are established and adhered to in today's operations. Because of U.S. leadership in the three MIOs under analysis, standards and norms have been established. It is incumbent upon the United States to continue to lead in forging standards and norms, so as to ensure that international law conforms to U.S. interests.[25] The development of MIOs standards and norms are discussed in this Chapter, which traces the historical evolution of maritime interdiction.

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[25]To paraphrase Professor Richard J. Grunawalt, "In international law, that which is not prohibited, is permitted." This view provides the United States the opportunity to shape international law. Professor Grunawalt practices what he preaches. His work with world navies using NWP 9 has served to establish the U.S. view as expressed in that handbook as the standard in international law for maritime operations, both in peacetime and during conflict. See, note 29, infra.

A. Mare Liberum v. Mare Clausum

MIOs, like any other action that impedes absolute freedom of navigation of the high seas, must contend with a fundamental controversy of maritime international law: mare liberum v. mare clausum; roughly translated as free seas versus closed seas. The struggle between these two concepts, waged for centuries, influences MIOs in that such operations are designed to, and in fact do, impose the concept of mare clausum on otherwise free seas.[26]

As long ago as the Third Century the Roman jurist, Ulpian, wrote: "Mare quod natura omnibus patet," which is translated as: "The sea is open to everyone by nature."[27] This notion of free seas encountered opposition in 1582, when Bodin "wrongly ascribed to Baldus the idea that governmental power was exercisable over shipping within sixty miles from the coast."[28] The view that sovereignty of the sea was possible held sway when Hugo Grotius, father of international law, published, in 1608, his great work, Mare Liberum, in which he "set out to vindicate the rights to trade . . . upon the theory that the seas are avenues of commerce

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[26]D.P. O'Connell, The International Law of the Sea, ed. I.A. Shearer, vol. 1 (Oxford: Clarendon Press, 1982), provides an excellent, succinct treatment of the subject in Chapter 1, "The History of the Law of the Sea." See also, Hedley Bull, Benedict Kingsbury, and Adam Roberts, eds., Hugo Grotius and International Relations (New York: Oxford University Press, 1990).

[27]Quoted in L. Oppenheim, International Law: A Treatise, 8th ed., ed. H. Lauterpacht, vol. 1 (London: Longmans, Green and Co., 1955), 582, note 1.

[28]O'Connell, Law of the Sea, 3.

which of their nature are not susceptible of appropriation."[29] English jurists argued persuasively in favor of the view that the seas are subject to sovereignty based primarily upon Christian notions of man's dominion over the earth, and it was not until 1700 that the controversy was decided in favor of mare liberum.[30]

Thus, the seas were to be open for the use of all nations, a condition favorable to international commerce, a critical aspect in the development of modern, industrially-based nation-states. None other than Alfred Thayer Mahan remarked:

> The first and most obvious light in which the sea presents itself from the political and social point of view is that of a great highway; or better, perhaps, of a wide common in which men pass in all directions.[31]

Constraints on this freedom, then, are a significant issue in the development of international law relating to it.

B. The Law of Neutrality

Mare liberum, free seas, is an ideal affected by the reality of international relations and war. Where a nation at war perceives that it is in its interests to restrict its enemy from

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[29]O'Connell, Law of the Sea, 9.

[30]It should be noted that even the English jurists argued for sovereignty of the seas only with respect to waters susceptible to immediate control of a nation state (e.g., the sixty mile limit noted in the text). It should also be noted that this concept survives to this day in the form of the territorial sea, and, to a lesser extent, contiguous and exclusive economic zones.

[31]A. T. Mahan, The Influence of Sea Power Upon History, 1660-1783, 5th ed. (Boston: Little, Brown, and Company, 1894), 25.

international trade, it will impose itself into this trade to the extent that it is able to do so, even where the imposition restricts the ideal of freedom of the seas.

Recognizing that the reality of war would result in some forms of restrictions on freedom of the seas, international law developed a means to limit the restrictive effects. This means is known as the law of neutrality, the "principal purpose [of which] is the regulation of belligerent activity with respect to neutral commerce."[32] In short, the law of neutrality, of which contraband, blockade, and visit and search are a large part:

> establishes a balance of interests that protects neutral commerce from unreasonable interference on the one hand and the right of belligerents to interdict the flow of war materials to the enemy on the other.[33]

Thus, while freedom of the seas could be constrained to some limited extent in the interests of belligerent rights, the seas

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[32]U.S. Navy Dept., The Commander's Handbook on the Law of Naval Operations, NWP 9 (Rev. A)(1989)[hereinafter referred to as NWP 9], ¶7.4. NWP 9 continues to be a key document in guiding U.S. Navy practices by which customary international law is created. The Annotated Supplement to NWP 9 provides the legal bases for the text. NWP 9 is unclassified, and, having been taught to officers of navies around the world, reportedly can be found in use on the bridges and in commanding officers' cabins on vessels throughout the globe. NWP 9 (Rev. B) is close to completion.

Several articles provide invaluable insight into the role of NWP 9. See, W. Michael Reisman and William K. Lietzau, "Moving International Law from Theory to Practice: The Role of Military Manuals in Effectuating the Law of Armed Conflict," U.S. Naval War College International Law Studies, ed. Horace B. Robertson, Jr., vol. 64, The Law of Naval Operations (Newport, RI: Naval War College Press, 1991), 1-18; A. V. Lowe, "The Commander's Handbook on the Law of Naval Operations and the Contemporary Law of the Sea," 64 U.S. Naval War College International Law Studies, ed. Horace B. Robertson, Jr., vol. 64, The Law of Naval Operations (Newport, RI: Naval War College Press, 1991), 109-147.

[33]NWP 9, ¶7.4.

were to remain as open as reasonably possible. Contraband, blockade, and visit and search are all concepts in the law of neutrality that enable that law to maintain the desired balance.

While not an enforcement mechanism, the notion of contraband is important to the law of neutrality. "Contraband consists of goods which are destined for the enemy of a belligerent and which may be susceptible to use in armed conflict."[34] The traditional distinction between absolute contraband (e.g., weapons or munitions) and conditional contraband (e.g., food or fuel) was blurred by World War II practices on both sides, and today almost any product could be considered contraband if so identified by an enforcing state, the Security Council, or legitimate regional organization.

In any case, the belligerent rights of blockade and visit and search exist so that a belligerent may restrict the flow of contraband into or out of a enemy state.

C. Blockade

Blockade, the father of maritime interdiction mechanisms, has a long history. The first blockade was likely that conducted by the Athenians in 425 B.C. at the island of Sphacteria, whereby the Spartan garrison on the island was forced to surrender.[35] Over the centuries the practice of blockade and the pressure of

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[34]NWP 9, ¶7.4.1.

[35]Helmut Pemsel, A History of War at Sea (Annapolis, MD: Naval Institute Press, 1975), 13-14.

neutrals in the interest of liberal commerce developed certain requirements that were necessary for any blockade to be legitimate. Those requirements are now recognized in customary international law as follows:

> **Establishment.** A blockade must be established by the government of the belligerent nation. . . . The declaration should include, as a minimum, the date the blockade is to begin, its geographic limits, and the grace period granted neutral vessels and aircraft to leave the area to be blockaded.[36]
>
> **Notification.** . . . Because knowledge of the existence of a blockade is an essential element of the offenses of breach and attempted breach of blockade . . . neutral vessels and aircraft are always entitled to notification. . . . The form of the notification is not material so long as it is effective.[37]
>
> **Effectiveness.** In order to be valid, a blockade must be effective. To be effective, it must be maintained by a surface, air, or subsurface force or other mechanism that is sufficient to render ingress or egress of the blockaded area dangerous.[38]
>
> **Impartiality.** A blockade must be applied impartially to the vessels and aircraft of all nations. Discrimination by the blockading belligerent in favor of or against the vessels and aircraft of particular nations, including those of its own or those of an Allied nation, renders the blockade invalid.[39]
>
> **Limitations.** A blockade must not bar access to or departure from neutral ports and coasts. Neutral nations retain the right to engage in neutral commerce that does not involve trade or communications originating in or destined for the blockaded area.[40]

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[36]NWP 9, ¶7.7.2.1.

[37]NWP 9, ¶7.7.2.2.

[38]NWP 9, ¶7.7.2.3.

[39]NWP 9, ¶7.7.2.4.

[40]NWP 9, ¶7.7.2.5.

Where the belligerent nation has met all of the above criteria, the blockade is legitimate and can be legally exercised.[41]

In modern armed conflict, technology has permitted, even demanded, certain variations on the traditional blockade. For example, the long distance blockades of the belligerents in World Wars I and II departed substantially from these traditional requirements. Moreover, a traditional, close-in blockade would be impossible to maintain against a well-equipped modern belligerent since one's own ships would be extremely vulnerable to modern weapons technology.

Nevertheless, it is important to maintain blockade as a separate form of maritime interdiction and to maintain the criteria identified above since traditional blockade is not totally obsolete.[42] For example, the U.S. blockade of "Haiphong

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[41]It goes without saying that, as with any other action in armed conflict, the use of blockade must meet the tests of necessity and proportionality. See, James J. McHugh, "Forcible Self-Help in International Law," U.S. Naval War College International Law Studies, Lillich and Moore, eds., vol. 62, Readings in International Law, vol. II of Readings, (Newport, RI: Naval War College Press, 1980), 139-63. For further study of blockade, see, Sally V. Mallison and W. Thomas Mallison, Jr., "International Law of Naval Blockade," United States Naval Institute Proceedings 102 (February 1976): 44-53; McNulty, "Blockade: Evolution and Expectation," Lillich and Moore, eds., Readings in International Law, 172-96; William O. Miller, "Law of Naval Warfare," Lillich and Moore, eds., Readings in International Law, 263-70; Robert D. Powers, "Blockade: For Winning Without Killing," United States Naval Institute Proceedings 84 (August 1958): 61; Edward W. Carter, "Blockade," United States Naval Institute Proceedings 116 (November 1990): 42; and, Thomas David Jones, "The International Law of Maritime Blockade--A Measure of Naval Economic Interdiction," Howard Law Journal 26 (1983): 759.

[42]Some commentators disagree with the view that traditional distinctions should be maintained within maritime interdiction. See, CDR Jane Gilliland Dalton, "The Influence of Law on Seapower

and other North Vietnamese ports . . . was undertaken in conformity with traditional criteria of establishment, notification, effectiveness, limitation, and impartiality."[43] Moreover, in spite of some views that "war is now outlawed under the U.N. Charter," it is likely that war between nations will continue, in spite of the best efforts of the United Nations, and that these wars may include the use of traditional blockade. To blur the distinctions may lead to misunderstanding in the international community. For example, had the United States used the term "blockade" to characterize its actions in the Persian Gulf in August 1990, perhaps the broad international support it was able to develop over time would have been more difficult to garner since a blockade is known to be an act of war.

Perhaps most importantly, the effects of violating a blockade can be quite severe. For example, vessels that attempt to run a blockade may be captured by the blockading force and sent to a belligerent port as "prize" for adjudication by a prize

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in Desert Shield/Desert Storm," Naval Law Review 41 (1993): 81; and Robert E. Morabito, "Maritime Interdiction: Evolution of a Strategy," Ocean Development and International Law, 22 (1992): 301.

[43]NWP 9, ¶7.7.5. Moreover, the traditional blockade was utilized in the Korean Conflict. The U.N. Naval Force enforced a blockade that met all customary legal requirements, including establishment, notification, effectiveness, and impartiality. See, Malcolm W. Cagle and Frank A. Manson, The Sea War in Korea (Annapolis, MD: United States Naval Institute, 1957). It should also be noted that the Korean Conflict blockade was an excellent example of multinational maritime interdiction. For a succinct yet thorough analysis, see, Sands, Blue Hulls, B-3 to B-6.

court.[44] This is not necessarily so with other forms of maritime interdiction, particularly with MIOs. In MIOs, capture and prize adjudication are not even contemplated.[45] Rather, vessels in violation are only "diverted" to another port, the crew, freight, and vessel simply being prohibited from entering a port of the target state. Clearly, the distinctions are necessary and useful.

D. Visit and Search

Another belligerent right that has developed in the law of neutrality is visit and search. Through visit and search, a belligerent seeks to control the flow of contraband on the high seas. Through this mechanism, visit and search of neutral vessels is conducted on the high seas by the vessels and forces of a belligerent nation. Visit and search, in short, is a means by which a belligerent:

> . . . may determine the true character (enemy or neutral) of merchant ships encountered outside neutral territory, the nature (contraband or exempt "free goods") of their cargo,

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[44]NWP 9, ¶7.9. See, Miller, "Belligerency and Limited War," Lillich and Moore, Readings in International Law, 166, wherein Miller states:

> The penalty for breach, or attempted breach, is the confiscation of both the ship and its cargo, whether contraband or not.
>
> I emphasize here that the liability of the blockade runner is to capture, and condemnation is the prize. The blockade runner could not be destroyed unless she resisted or fled, and unless destruction was necessary.

[45]But see, S/RES 820 (1992), which authorized the sale of both violating vessels and the cargo of violating vessels in the Adriatic operations.

> the manner (innocent or hostile) of their employment, and other facts bearing on their relation to the armed conflict.[46]

Several restrictions apply to visit and search:

> Neutral vessels engaged in government noncommercial service may not be subjected to visit and search. Neutral merchant vessels under convoy of neutral warships of the same nationality are also exempt from visit and search . . . .[47]

Needless to say, neutral warships are not subject to visit and search.[48] NWP 9 sets forth clear procedures for the conduct of visit and search.[49]

MIOs clearly acquire some of their characteristics from visit and search. Indeed, the concepts and conduct of visit and search is what gives MIOs teeth. Nevertheless, the same distinctions as those discussed with respect to blockade must be maintained for the very same reasons.[50] Visit and search is a belligerent right. MIOs are an economic sanction enforcement mechanism conducted under circumstances that do not amount to war. The consequences for violators in visit and search are severe. Where a vessel is discovered with contraband destined for the enemy, or if the vessel resists visit and search, the

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[46]NWP 9, ¶7.6.

[47]NWP 9, ¶7.6.

[48]NWP 9, ¶7.6.

[49]NWP 9, ¶7.6.1.

[50]For those who believe that traditional visit and search is not likely in the 21st century world, please refer to the extensive visit and search operations in the Iran-Iraq War. For a succinct analysis, see, David L. Peace, "Major Maritime Events in the Persian Gulf Between 1984 and 1991: A Juridical Analysis," Virginia Journal of International Law 31 (Summer 1991): 545.

crew is subject to detention and the goods and vessel may be captured and sent to a belligerent port as a "prize" for adjudication by a prize court.[51] In MIOs, on the other hand, a vessel in violation is merely "diverted," its crew and cargo left intact.[52]

E. Pacific Blockade

A third, and very close, ancestor of MIOs is pacific blockade. Pacific blockade is distinguished from traditional blockade primarily by the fact that it does not involve belligerency. Indeed, it is designed to control the flow of commerce of a target state precisely in order to maintain peace.[53] Pacific blockade can be defined as follows:

> The cutting off of access to or egress from a foreign port or coast by a naval operation designed to compel the territorial sovereign to yield to demands made of it, and by a process whereby the blockading state does not purpose to bring about a state of war.[54]

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[51]NWP 9, ¶7.9. The crew must be repatriated as soon as circumstances reasonably permit. NWP 9, ¶7.9.2.

[52]But note that in the Adriatic MIOs, the United Nations authorized the sale of violating vessels and the sale of their cargoes. See, Chapter V, infra.

[53]See, Walter R. Thomas, "Pacific Blockade: A Lost Opportunity of the 1930's," Lillich and Moore, Readings in International Law, 197-200. For an excellent brief treatment of pacific blockade, see Neill H. Alford, Jr., U.S. Naval War College International Law Studies, vol. 56, Modern Economic Warfare (Law and the Naval Participant) (Newport, RI: Naval War College Press, 1963), 273. For an extensive study of pacific blockade, see, Alfred E. Hogan, Pacific Blockade (Oxford: Clarendon Press, 1904).

[54]W. Gentler, "Background Information on the Legal Employment of Blockade and Related Measures of Naval Economic Interdiction," Unpublished memorandum at the Naval War College (1961), quoted in

Pacific blockade has been used at numerous times in the past.[55] For example, Great Britain, France, and Russia conducted a pacific blockade of Morea in 1827 to keep the Turkish Fleet confined to Navarino.[56] A British and French blockade of the Netherlands in 1833 forced the Dutch to comply with treaty obligations providing for Belgian independence.[57] A six-nation coalition blockaded Crete in 1897 against the delivery of weapons to Greek insurgents.[58] Great Britain, Germany, and Italy imposed a pacific blockade against Venezuela in 1902 in an attempt to force Venezuela to pay its debts.[59]

Professor Thomas concludes that the above-noted blockades were "both pacific and effective and demonstrated how combined naval action could create stability within an area."[60] And while the name is self-contradictory (i.e., by definition, under customary international law, blockade is a belligerent right), pacific blockade clearly can be useful. The concept of a peaceful means by which to force compliance by the target state

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Jones, "The International Law of Maritime Blockade," 3, note 6.

[55]Thomas cites "20 collective pacific blockade cases effectively recorded before World War II." Thomas, "Pacific Blockade," Lillich and Moore, eds., Readings in International Law, 198.

[56]Ibid.

[57]Ibid.

[58]Ibid.

[59]Gentler, Unpublished memorandum, 15.

[60]Thomas, "Pacific Blockade," 198.

is at the very heart of MIOs. Indeed, the combined nature and the effectiveness of past pacific blockades demonstrate that MIOs are direct descendants of pacific blockade. Both pacific blockade and MIOs seek to coerce compliance through peaceful, yet, if necessary, forcible means.

The only characteristics that distinguish pacific blockade and MIOs are the fact that pacific blockade, to be legitimate, must be both effective and impartial, whereas MIOs need be neither. On the other hand, pacific blockade historically was imposed collectively by world powers, and, therefore, the measures of effectiveness and the impartiality of enforcement were decided by those powers. As a result, these two characteristics that seem to distinguish pacific blockade and MIOs may, if fact, do nothing of the sort. It could well be argued that MIOs are merely the late-20th century version of pacific blockade.

F. The Cuba Quarantine

The other great influence on MIOs is the example of the Cuba Quarantine.[61] The Quarantine developed out of the unique

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[61]On the Cuban Quarantine, see Elie Abel, The Missile Crisis (Philadelphia and New York: J.B. Lippincott, Company, 1966); Abram Chayes, The Cuban Missile Crisis: International Crises and the Role of Law (New York and London: Oxford University Press, 1974); Robert A. Divine, The Cuban Missile Crisis (Chicago: Quadrangle Books, 1971); Graham T. Allison, Essence of Decision: Explaining the Cuban Missile Crisis (Boston: Little, Brown and Company, 1971); and, David Detzer, The Brink: The Cuban Missile Crisis 1962 (New York: Thomas Y. Crowell, 1979). A discussion of the international law aspects of the Quarantine is contained in American Journal of International Law 57 (1963). Specifically, the following articles

tensions and threats of the Cold War. Recognizing the high risk involved in taking armed action against the Soviet Union and Cuba, the United States employed the techniques of visit and search in a non-belligerent environment to force the Soviet Union to withdraw the Cuban missile threat.[62]

U.S. intelligence sources determined in mid-October 1962 that medium range ballistic missile sites were under construction in Cuba, and that large numbers of Soviet advisors had arrived in Cuba.[63] This was viewed by U.S. policy-makers as a grave threat to the security of the nations of the Western Hemisphere, and

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are pertinent: Carl Q. Christol, "Maritime Quarantine: The Naval Interdiction of Offensive Weapons and Associated Materiel to Cuba, 1962," American Journal of International Law 57 (1963): 525; Quincy Wright, "The Cuban Quarantine," American Journal of International Law 57 (1963): 546; C.G. Fenwick, "The Quarantine Against Cuba: Legal or Illegal?" American Journal of International Law 57 (1963): 588; Brunson MacChesney, "Some Comments on the 'Quarantine' of Cuba," American Journal of International Law 57 (1963): 592; and Myres S. McDougal, "The Soviet-Cuban Quarantine and Self-Defense," American Journal of International Law 57 (1963): 597.

[62]It easily could be argued that the Cuba Quarantine was the first MIO. It seems to share with MIOs most standards and norms. MIOs were named such not because they was perceived to be materially different from quarantine, but for political purposes. The United States needed an affirmative Soviet vote in the Security Council in order to secure U.N. sanctions against Iraq in August 1990. In an effort to avoid inflaming Soviet passions, U.S. leadership decided against the term quarantine and announced maritime interception operations. MIOs, however, were simply quarantine taken off the shelf and dusted off for the world of the 1990s. Nevertheless, there is a distinction. Quarantine is not an economic sanction enforcement tool. Rather, it was used simply to stop the flow of nuclear missiles from the Soviet Union to Cuba, and also to force the withdrawal of those missiles already in Cuba. MIOs, on the other hand, are designed to enforce economic sanctions against a target state.

[63]Able, The Missile Crisis, 29.

particularly to the security of the United States.[64] U.S. policy-makers considered options ranging from purely diplomatic discussions with the Soviet Union to the invasion of Cuba.[65] In the middle of the option list were blockade and air strike. There were sound reasons to use a blockade. Namely, the U.S. Navy controlled the seas around Cuba, blockade demonstrated to the Soviets U.S. resolve, and blockade controlled escalation in the way MIOs have been used to control escalation. The significant drawback to blockade was that it was, and is, considered a belligerent act of a nation at war.[66]

The United States took evidence to the Organization of American States (OAS) to enlist the support of that regional organization in framing a response. With OAS support, President Kennedy chose to use some of the concepts of blockade, but, to avoid the legal consequences associated with of the term blockade, the United States termed its actions a "Quarantine." The Quarantine was placed into effect at 1000 on October 24, 1962. After significant tensions throughout numerous parts of the operation, Soviet ships carrying missiles to Cuba turned around short of the Quarantine line, and the crisis was averted.

The Quarantine, however, was put into place for the same reasons that MIOs are used, was sanctioned by a regional organization, was defended as a measure in compliance with the

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[64]Ibid.

[65]Ibid., 79.

[66]Ibid., 62.

United Nations Charter, and proved to be effective without the the use of actual force.[67] In both the Quarantine and MIOs a regional organization has used maritime interception to coerce a target state to comply with what that regional organization has determined to be the rule of law. The advantages of MIOs are seen in the use of Quarantine--a rapid response by the regional organization deterred the offending conduct, stanched the flow of targeted trade into and out of the target state, and controlled escalation of the crisis. Clearly, then, the Cuba Quarantine is the father of MIOs.

G. The Derivation and Norms of MIOs

MIOs clearly derive, in part, from all of the concepts discussed in this chapter. MIOs are a legitimate form of mare clausum, and have roots in blockade and visit and search, as those two belligerent rights were the first forms of maritime interdiction. However, blockade and visit and search are distant ancestors in that they are belligerent rights while MIOs are not. By their very nature blockade and visit and search are aggressive, hostile maritime interdiction methods, against an enemy. MIOs are closer to the concepts of pacific blockade and quarantine, as they are designed to resolve disputes peacefully, but allow limited and controlled force to be used, if necessary.

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[67]It is worth noting that the United States intended to attack Cuba on October 30, 1962 unless the Soviet Union withdrew the missiles. Allison, Essence of Decision, 46.

The legal norms of MIOs derive from this same ancestry. Legal norms permit some predictability in the actions of nations. Thus, where a blockade is established, both belligerent and neutral nations can know what to expect from all parties involved. Likewise, where a belligerent nation announces its intentions to exercise its right of visit and search, neutral nations can know what to expect when their merchant vessels encounter the warships of that belligerent on the seas. MIOs, a relative newcomer to international law, also has established legal norms.[68]

The distinctions between the various forms of maritime interdiction are critical, and were well articulated by Secretary-General Perez de Cuellar, when he stated, in discussing the Persian Gulf Crisis:

> The U.N. needed to demonstrate that: the way of enforcement was qualitatively different from the way of war; as such action issued from a collective engagement, it required a discipline all its own; it strove to minimize undeserved suffering to the extent humanly possible and to search for solutions for the special economic problem confronted by states arising from the carrying out of enforcement measures; what it demanded from the party against which it was employed was not surrender but the righting of the wrong that had been committed and it did not foreclose diplomatic efforts to arrive at a peaceful solution consistent

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[68]Admittedly, just more than four years of MIOs is not a long time in which to establish customary international law. However, MIOs, as has been shown, have a long ancestry and appear to be only another offspring on the larger theme of maritime interdiction. In this respect its norms are controlled by its roots. Also, the three MIOs have been nearly unanimously observed and respected by the international community. There is little doubt about the legal norms of such operations in the future.

with Charter principles and the determinations made by the council.[69]

Thus, as noted in the Introduction, MIOs are generally an early step in a graduated program to coerce compliance by the target state. They are designed to be limited, peaceful to the maximum extent possible, proportional, and non-escalatory. To remain a viable tool in these respects, MIOs must remain distinguishable from other legitimate, but quite different, forms of maritime interdiction.

Of course, if an interdiction mechanism has no teeth, it likely will not be effective. For example, in writing of the Adriatic MIOs, Adam B. Siegel argued in the Naval War College Review that "[e]mbargo patrols are ineffective without the right to use force, if necessary, to stop ships."[70] Today's technology, however, provides the tools to enforce sanctions without the exchange of fire. For instance, the vertical takedowns of vessels by U.S. Coast Guard Law Enforcement Detachments (LEDET) have, so far in MIOs, resulted in successful inspections without weapons exchanges.[71] In the three MIOs thus

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[69]"A momentous significance well beyond the crisis. . . ." U.N. Chronicle 27 (December 1990): 22. It must be noted that the Secretary-General's stated justification resembles a justification based upon the customary international law concept of reprisal.

[70]Siegel, "Enforcing Sanctions," 132.

[71]See, U.S. Dept. of Defense, Conduct of the Persian Gulf War, Final Report to Congress pursuant to Title V of the Persian Gulf Conflict Supplemental Authorization and Personnel Benefits Act of 1991 (Public Law 102-25) (Washington, DC: 1992), 49-62. Research has revealed no cases of death resulting directly from weapons exchanges in MIO thus far conducted. Research has further revealed thousands of interceptions, hundreds of boardings, and hundreds of

far conducted, force was authorized to enforce the sanctions. But the force used in MIOs is limited, usually to warning shots, and is controlled at the highest political levels. For example, CDR Dalton writes:

> France surprised everyone by announcing that her four warships in the Persian Gulf were being ordered to use force if necessary to ensure compliance with the sanctions. . . . [T]he French Foreign Ministry noted that "an embargo is only meaningful if it is effective," and effectiveness requires "measures of verification, control and restraint." French naval forces had been given instructions to apply such measures with "firmness." French navies could now board vessels to determine their contents and destination and could fire warning shots across the bow. Only Francois Mitterand, however, could authorize actual attack or disabling fire.[72]

Whether this micromanagement is a positive development may be argued ad infinitum. The point is, because of the political sensitivities involved in crises, political leaders often strictly control the use of force so as to prevent escalation. MIOs offer a flexibility that decision-makers find attractive. They can authorize force to the extent that they wish, provided such force fits within the legal justification for the MIOs, be it customary international law or the baseline enabling document (i.e., a resolution) of the U.N. Security Council or a regional organization. Thus, force, while a part of every form of maritime interdiction, is much more limited in MIOs than in most others.

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diversions in the MIO thus far conducted.

[72]Dalton, "The Influence of Law," 42-43, citing, "William Drozdiak, "Use of Force Authorized by France," Washington Post, 20 August 1990, section A, p. 16.

A comparison of the various forms of maritime interdiction mechanisms reveals the similarities and distinctions among their respective norms. Figure II-1 (following page) provides such a comparison.

The norms of MIOs, derived from the long history of the struggle between mare liberum and mare clausum, blockade, visit and search, pacific blockade, and quarantine, are, therefore, clear. Future operations should meet these norms to ensure legitimacy.

FIGURE II-1

MARITIME INTERDICTION MECHANISMS--NORMS COMPARED

	Blockade	Visit/ Search	Pacific Blockade	Quar- antine	MIOs
Establishment	x	x	x	x	x
Notification	x		x	x	x
Effectiveness	x		x		
Impartiality	x		x		
Limitations	x	x	x	x	x
Use of Force	x	x	x	x	x[73]
Clearcerts[74]	x	x	x	x	x
Applicable to neutrals	x	x	x	x	x
Belligerent Right	x	x			
Sanction Enforcement Mechanism			x		x
Effect of violation	prize	prize	divert	divert	divert[75]

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[73]In MIOs, the use of force is limited not only by international law, but by the baseline enabling document. The result is that MIOs have seldom, if ever, utilized actual force beyond warning shots.

[74]Clearcerts, short for clear certifications, are essentially preauthorization to transit the area of operations. The British call them navicerts. A merchant vessel, made aware of the MIOs through a Notice to Mariners, may divert itself to a particular port, identified in the Notice, to obtain certification that its cargo is clear and free of contraband and to obtain authorization to proceed in accordance with its schedule.

[75]It should be noted that only in the Adriatic MIO did the Security Council authorize the confiscation of violating vessels and the seizure of their cargo. S/RES 820 (1993). This further establishes the point that the three MIO conducted so far, like any operation that depends upon the United Nations for its legal

CHAPTER III

LEGAL JUSTIFICATION

As previously noted, MIOs conducted thus far have relied upon U.N. authorization. The one exception were the MIOs conducted by the United States and Great Britain at in the initial days of the Persian Gulf Crisis, which were actions of collective self-defense. Still unresolved is the legitimacy of these actions given the U.N. Charter. This Chapter does not attempt to resolve the question. Rather, it focuses on the conceptual legal bases for MIOs, and discusses them in light of their multinational nature as thus far conducted.

An understanding of the legal justification used for multinational maritime interception operations is important since the sanctioning organization will seek to conduct an operation recognized as legitimate under international law. Historically, blockade and the other parts of the law of neutrality were justified by their development in customary international law. Multinational maritime interception operations are a creature of the post-World War II era, and rely upon the United Nations Charter for their justification. This is critical because the form of MIOs is controlled by the Security Council or regional

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justification, will be constrained by the baseline enabling documents.

organization resolutions authorizing them. Thus, when planning and executing MIOs, the commander must conform to the baseline enabling documents (e.g., the Security Council resolutions).

A. Customary International Law

Customary international law developed several concepts over time to enable nations to respond to aggression. It continues as the basis of action in spite of its oft-perceived supersession by the law of the United Nations Charter. Such response is generally known as forcible self-help, and there are three types of forcible self-help: (1) self-defense; (2) reprisal; and, (3) intervention.[76]

1. Self-Defense

The best explanation of the customary right of self-defense was provided by Daniel Webster when, as Secretary of State, he analyzed the case of the CAROLINE.[77] The CAROLINE, an American-

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[76]McHugh, "Forcible Self-Help," Lillich and Moore, Readings in International Law, 139-163. McHugh's excellent article provides a thorough yet succinct analysis of the validity of self-help given the language of the U.N. Charter. Significantly, McHugh points out, at 142, that "resort to self-help has waxed and waned in relationship to the degree to which society was integrated or diffused." Brierly identifies four measures of self-help, including self-defense, retorsion, reprisals, and intervention. See, J.L. Brierly, The Law of Nations: An Introduction to the International Law of Peace, 6th ed., ed. Sir Humphrey Waldock (New York: Oxford University Press, 1963).

[77]See, Martin A. Rogoff and Edward Collins, Jr., "The CAROLINE Incident and the Development of International Law," Brooklyn Journal International Law 16 (1990): 493, which provides a thorough analysis of the case.

owned boat, was believed by the British to have been used to transport men and war material to Canadian rebels. The British crossed over to the American side of the Niagara River and sent the CAROLINE over Niagra Falls. In the process, several American citizens were killed. This incident inflamed passions on both sides of the Atlantic. In an exchange of diplomatic notes, the British defended their action as an act of anticipatory self-defense. As Secretary of State, Webster was tasked with framing the American response. McHugh summarizes Webster's conclusions regarding the use of self-defense as follows:

> - Its exercise must be in response to actual or threatened violence.
>
> - The actual or threatened violence must be of such a nature as to create an instant and overwhelming necessity to respond, and
>
> - The response taken must not be excessive or unreasonable in relation to the violence being inflicted or threatened.[78]

While scholars may argue with the vagueness of Webster's analysis, that analysis has come to form the basis of modern views of self-defense--it must meet tests of both necessity and proportionality.[79]

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[78]McHugh, "Forcible Self-Help," Lillich and Moore, Readings in International Law, 143-44.

[79]McHugh, at 143, alludes to the vagueness argument, and cites, in note 23, Robert W. Tucker, "Legal Restraints on Coercion," The United States in a Disarmed World (Baltimore: Johns Hopkins Press, 1966), 149, n. 46. It is worth noting that vagueness and ambiguity can be advantageous both domestic and international law, as it allows for flexibility. The best language is balanced, so as not to constrain too severely while setting forth reasonable, workable constraints.

The importance of Webster's analysis to MIOs should be obvious. MIOs are limited, measured responses to violations of international law, such as a threat of force, the actual use of force, or even internal political revolution or instability. By their very nature, they would rarely, if ever, be excessive or unreasonable, at least as so far conducted. In this respect, MIOs are ideal for reacting within the boundaries of the customary international law of self-defense.[80] From this classic analysis are built the everlasting pillars of the use of force in international law: necessity and proportionality.

2. Reprisal

The second form of forcible self-help, reprisal, also provides a sound legal justification for MIOs within the customary international law. Reprisal is a means of forcible self-help to redress wrongs already inflicted.[81] Its origins are to be found in the long history of private reprisals achieved by the seizure of goods and property on the high seas by individuals who believed that they had been wronged by one from who they seized the goods and property.[82] Public reprisals became a part of the customary international law of forcible

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[80]A discussion of the legitimacy of the customary international law of self-defense in light of the U.N. Charter is provided in Chapter IV, infra.

[81]McHugh, "Forcible Self-Help," Lillich and Moore, Readings in International Law, 143.

[82]Ibid., 144.

self-help in the 18th and 19th centuries. The guiding principles of reprisal in modern international law derive from the NAULILAA case of 1928. They are distilled by McHugh as follows:

> - There must have been an illegal act on the part of the target state.
>
> - Demand for redress must be made and redress not provided, and
>
> - The measures taken must not be excessive, i.e., out of all proportion to the act which motivated them.[83]

These norms, too, may be criticized as vague, but they, like Webster's analysis, have withstood the tests of time and practice.

MIOs could easily be justified on the basis of reprisal. Where another state commits an illegal act and demands of redress have not been complied with, MIOs can be tailored within the bounds of "excessive force" to force redress. According to McHugh, blockade was viewed historically as a form of reprisal.[84] However, as McHugh admits, "It has been widely conceded that [reprisal] is now generally unacceptable."[85] While other scholars may view blockade simply as one of many belligerent actions taken during the course of a war that is

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[83]Ibid., 145.

[84]Ibid., 144.

[85]Ibid., 150-51. McHugh, at 150-51, provides a brief discussion on the use of reprisal in the post-Charter world. He concludes that "a state may be legitimately able to use force in other than self-defense and without reference to the United Nations in order to secure the exercise of certain legal rights." See also, the discussion, at page 49, infra, regarding the use of reprisal as a basis for MIOs.

fought in self-defense, the fact remains that reprisal is a viable justification for the use of MIOs.

3. Intervention

The third type of forcible self-help in the customary international law is intervention. As McHugh admits, intervention is "more a method of applying force than a conceptual basis or justification for its use."[86] Still, there is some historical basis for intervention, and it is generally regarded as legitimate. It seems clear, in fact, that intervention has been, historically, a common legal justification for action (e.g., the United States in its many Central and South American interventions). Moreover, intervention is the basis, albeit via United Nations action, for most armed responses to aggression today.

B. Law Under the U.N. Charter

The United Nations Charter sets forth a scheme for dispute resolution which seems to abrogate the use of unilateral force except in self-defense, but even then only until after the Security Council undertakes responsibility for resolution of the dispute. The scheme favors the peaceful resolution of disputes,

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[86]Ibid.

but it permits forcible action by the Member Nations upon Security Council direction if peaceful measures fail.[87]

The first indication of an intention to abrogate the unilateral forcible settlement of disputes is found in the Preamble, which states that the Member states, "to save succeeding generations from the scourge of war," have united their "strength to maintain international peace and security" in order to, among other things, "ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest."[88]

The Charter then sets forth the scheme for dispute resolution. First, under Article 2: "All Members shall settle their international disputes by peaceful means in such a manner that international peace and security are not endangered."[89] Article 2 further states that:

> All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.[90]

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[87]It has been said that "[t]he United Nations system is an elegant, carefully crafted instrument to make war illegal and unnecessary." Thomas M. Franck & Faiza Patel, "UN Police Action in Lieu of War," in "Agora, The Gulf Crisis in International and Foreign Relations Law," American Journal of International Law 85 (January 1991): 63. As will be noted later in the paper, the issue of the legitimacy of using force where the Security Council has failed to act, or has acted ineffectively, remains a pressing one.

[88]Louis B. Sohn, ed., Basic Documents of the United Nations, 2d rev. ed. (Brooklyn: The Foundation Press, Inc., 1968), 1.

[89]Ibid., 2.

[90]Ibid., 2.

After several organizational chapters, the Charter sets forth, in Chapter VI, "The Pacific Settlement of Disputes." Article 33 calls for settlement of disputes by "peaceful means of [the parties'] choice."[91] The Security Council is permitted to become involved in such disputes, but apparently only in an advisory capacity.[92]

If pacific settlement fails and a dispute becomes a threat to peace, or if there is any other threat to peace or act of aggression, then the Charter sets forth, in Chapter VII, the action to be taken. At this point, a dispute is within Security Council responsibility. Still, the Charter favors peaceful resolution, and in Article 41 authorizes the Security Council to use measures short of armed force, such as "complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations."[93] If such peaceful measures fail, the Security Council, under Article 42:

> may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.[94]

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[91]Ibid., 9. Among the possibilities listed are "negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement [and] resort to regional agencies or arrangements."

[92]Ibid., 9-10.

[93]Ibid., 11.

[94]Ibid.

Article 43 calls upon the Member states to "make available to the Security Council . . . armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security."[95] The Charter contemplates the establishment of a Military Staff Committee to assist the Security Council in the use of force.[96] Finally, Article 48 requires Member states, as determined by the Security Council, to "carry out the decisions of the Security Council for the maintenance of international peace and security."[97]

One of the most significant and controversial articles in the Charter, Article 51, now comes into play. It states:

> Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.[98]

It seems quite clear from this language that a nation or collection of nations may act in self-defense, in accordance with customary international law, but only "until the Security Council has taken measures necessary to maintain international peace and

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[95]Ibid.

[96]Ibid., 11-12.

[97]Ibid., 12.

[98]Ibid., 12-13.

security." Thus, where a nation acts in self-defense, reports the act to the Security Council and the Security Council takes measures to maintain international peace and security, the individual nation is precluded from further unilateral or non-sanctioned collective action in its own self-defense, unless, presumably, the Security Council found later that it could not take necessary action.[99] That is the precise point of the United Nations--it exists for the international community, in unified strength, to assume responsibility for the maintenance of peace. And while no nation is expected to allow itself to be overrun by another state, and while a nation may act in self-defense, even in anticipatory self-defense, once the Security Council assumes responsibility for a dispute by taking action, the individual state must allow the international community to resolve the dispute.[100] At least this seems clear.

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[99]This specific issue could have arisen in the Persian Gulf Crisis. Assume that the Security Council was unable to pass any resolution after Resolution 661, which called for the embargo of trade to and from Iraq and Kuwait, but did not specifically authorize any sort of enforcement mechanism. Could the United States, after having been requested to do so by the exiled government of Kuwait, have lawfully undertaken maritime interception operations unilaterally? In short, the United States did just that, between August 16, 1990, when it began interception operations, and August 25, 1990, when the Security Council authorized forcible enforcement measures. See, Chapter IV, infra.

[100]This view is supported by many, including the United Nations itself. During the Persian Gulf Crisis, Secretary General Perez de Cuellar opined regarding the imposition of enforcement measures by the United States that "only the United Nations, through its Security Council resolutions, can really decide about a blockade." Patrick E. Tyler and Al Kamen, "American Blockade is Criticized at U.N.," Washington Post, 14 August 1990, Section A, p. 1. More generally, the U.N. General Assembly has voiced its view about the use of force under the Charter. See, United Nations, General

Vociferous critics of this view abound.[101] It has been argued that a state acting in individual or collective self-defense may do so even where such action is in direct conflict with action of the Security Council.[102] In writing on the Persian Gulf Crisis in particular, but on the right of self-defense under the U.N. Charter generally, Eugene V. Rostow argued:

> [T]he Charter rule is that the exercise of the right of self-defense does not suspend the jurisdiction of the Security Council and that the assumption of jurisdiction by the Security Council does not suspend the "inherent" right of self-defense of states to defend themselves. Under the Charter, the Security Council has the last word, and can stop a war of self-defense by deciding it has become a breach of the peace. But there is all the difference in the world between a right of self-defense which evaporates when an item is put on the Security Council's agenda and a war of self-defense which can be stopped only by a Security Council resolution subject to the veto of the permanent members.[103]

This view is, ultimately, the realistic one, since no nation is going to suspend its option of self-defense where its very

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Assembly, 25th Session, Official Records, Supplement 28, Resolution No. 2625 (XXV), A8028 (New York: 1971), 121 et seq.

[101]See, McHugh, "Forcible Self-Help," Lillich and Moore, Readings in International Law, 139-63. McHugh provides a discussion of this critical issue, the delicate balance of which is acutely important to decision-makers.

[102]D.W. Bowett, Self-Defence in International Law (New York: Frederick A. Praeger, 1958), 195-97. Bowett's treatise is comprehensive.

[103]Eugene V. Rostow, "Until What? Enforcement Actions or Collective Self-Defense?," in "Agora: The Gulf Crisis in International and Foreign Relations Law," American Journal of International Law 85 (July 1991): 513.

existence is at stake simply because the Security Council may take action to assist it.[104]

This issue is one of importance for MIOs, since, in practice, they have been multinational operations, and, therefore, they must have some multinational authorization to be legitimate. In some cases, MIOs will be sanctioned by a United Nations resolution, whether specifically identified or not. It is conceivable that MIOs will be conducted without such a resolution but still under the Charter in accordance with the provisions of Chapter VIII, which pertains to "Regional Arrangements." It should also be noted that MIOs, as the offspring of blockade, may have been justified under the customary international law of reprisal, and "[o]f the three categories of forcible self-help . . . the law of reprisals has probably been most severely limited since the adoption of the U.N. Charter. It has been widely conceded that this method of

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[104]For more study of this difficult issue, see, McHugh, "Forcible Self-Help," Lillich and Moore, Readings in International Law,139-163; M.S. McDougal and F. Feliciano, Law and Minimum World Public Order (New Haven: Yale University Press, 1967), wherein the authors argue that the U.N. Charter fails to state what action is lawful in any given situation; Richard A. Falk, "The Legal Control of Force in the International Community," in Legal and Political Problems of World Order, ed. Saul H. Mendlovitz (New York: Fund for Education Concerning World Peace Through World Law, 1962), 143, in which Falk presents the "Falk Criteria" used by McHugh to analyze the legitimacy of the use of force; J.L. Brierly, The Law of Nations; Franck and Patel, "UN Police Action," 63-73; Karl W. Deutsch and Stanley Hoffman, eds., The Relevance of International Law (Cambridge, MA: Schenkman, 1968); Ian Brownlie, International Law and the Use of Force by States (Oxford: Clarendon Press, 1963).

self-help is now generally unacceptable."[105] Thus, it would seem almost inconceivable that MIOs will be conducted without some form of U.N. sanction. Nevertheless, there is little doubt that both the United States and Great Britain would have continued MIOs in the Persian Gulf Crisis on the basis of collective self-defense, absent a U.N. resolution authorizing such actions, and rightly so. The hard question arises when individual or collective self-defense is merely the ostensible justification masking aggression. The Russia-Baltic states scenario is just such a case. This is an issue with which scholars and decision-makers will continue to struggle.

C. The Basic Tenets

As previously noted, in international law there are two pillars supporting the use of force during armed conflict: necessity and proportionality. It is generally recognized that these two must be balanced in practice. William O. Miller analyzed the two pillars and concluded:

> The essential thrust of these rules for warfare at sea has been to reserve for the belligerent, within the bounds of humanitarianism, the right to attack those objects which were recognized as <u>legitimate military objectives</u>. It also provided the belligerent with the right to use such force as may be necessary to attain his objective, while at the same time providing protection--as was physically possible under the

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[105]McHugh, "Forcible Self-Help," Lillich and Moore, <u>Readings in International Law</u>, 150-51.

circumstances--to noncombatants who may become involved and to survivors of the action.[106]

In practice, the rules of blockade and visit and search all stem from this balancing test. MIOs, however, because they are not belligerent actions, may not need to meet this test. And while it may seem anomalous, it is conceivable that some MIOs would ignore these limiting principles and be conducted in a much more severe manner.

Thus far, all MIOs, except the U.S. and British MIOs in the early days of the Gulf Crisis, arose from U.N. Security Council resolutions which, as representative of international will, have decided the necessity and proportionality issues for the international community, even where MIOs were not of military necessity. All that was left in the execution was the need to conform to the baseline enabling documents (i.e., the resolutions).

Regardless of the legal justification (i.e., under customary international law or under the U.N. Charter), MIOs likely will conform to the spirit of the basic tenets of the use of force in international law; namely, necessity and proportionality. As already noted, by their very nature MIOs are extremely limited in the use of force, and will seldom, if ever, fail to meet the test of proportionality, which appears to be the more critical of the two principles.

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[106]Miller, "Law of Naval Warfare," Lillich and Moore, Readings in International Law, 264.

CHAPTER IV

THE THREE CASES--SITUATIONS AND LEGAL JUSTIFICATIONS

There have been three multinational MIOs conducted thus far.[107] The first, against Iraq in both the Persian Gulf and Red Sea, were the most dramatic and, begun in August 1990, the longest, continuing to the time of this writing. The second were in the Adriatic, off the coast of the former Yugoslavia, and they, too, continue to the time of this writing. The third was in the Caribbean Sea off the coast of Haiti. This operation was concluded when President Aristide was returned to power in Haiti in October 1994.

An analysis of each of these MIOs will reveal their form and their problems, and will provide a road map by which to plan future such operations.[108] This chapter analyzes the situations and legal justifications for each of these three MIOs.

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[107]Neither pacific blockades nor more recent operations such as the Cuba Quarantine and Beira Patrol are included in this figure. These are viewed as ancestors of MIO, as discussed in Chapter II, supra.

[108]Where the MIOs are multinational, the road map is usually found in the baseline enabling documents (e.g., Security Council resolutions). In other words, compliance with the authorizing resolutions is critical to legitimacy, and, therefore, an analysis of these documents should reveal the limits of the MIOs themselves. This points out the need for clarity in the language of such documents. On the other hand, creative ambiguity can be useful.

A. The Persian Gulf Conflict[109]

On August 2, 1990, Iraqi military forces launched an unprovoked invasion of neighboring Kuwait and occupied it within days. World reaction, as embodied in the U.N. Security Council, was swift, united, and decisive. On August 2, 1990, the U.N. Security Council passed Resolution 660 condemning the invasion and demanding the immediate and unconditional withdrawal of Iraqi forces from Kuwait.[110] Also on August 2, 1990, the United States responded through Executive Orders 12722 and 12723, which froze Iraqi and Kuwaiti assets in the United States and banned all U.S. trade with and travel to Iraq and Kuwait.[111] Likewise, France and Britain froze Iraqi and Kuwaiti assets. Both the Soviet Union and the People's Republic of China acted, banning all arms shipments to Iraq and Kuwait. Regionally, the Gulf

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[109]For the most complete analyses of the Persian Gulf Crisis, see, Gulf War, Final Report; John Norton Moore, Crisis in the Gulf: Enforcing the Rule of Law (New York: Oceana Publications, Inc., 1992); and, Lawrence Freedman and Efraim Karsh, The Gulf Conflict 1990-91: Diplomacy and War in the New World Order (Princeton, NJ: Princeton University Press, 1993). For thorough analyses of the Gulf Crisis MIOs, see CDR Jane Gilliland Dalton, JAGC, USN, "The Influence of Law on Seapower in Desert Shield/Desert Storm," 41 Naval Law Review (1993): 54; and Lois E. Fielding, "Maritime Interception: Centerpiece of Economic Sanctions in the New World Order," 53 Louisiana Law Review (March 1993): 1191. See also, Richard J. Grunawalt, "The Maritime Dimension of Operation Desert Shield," Southern Illinois University Law Journal 15 (1991): 487; and, Horace B. Robertson, "Interdiction of Iraqi Maritime Commerce in the 1990-91 Persian Gulf Conflict," Ocean Development and International Law Journal 22 (1992): 289.

[110]S/RES/660 (1990).

[111]U.S. President, Executive Orders 12722 and 12723, "Blocking Iraqi Government Property and Prohibiting Transactions with Iraq," and, "Blocking Kuwaiti Government Property," Federal Register (3 August 1990) vol. 55, no. 150, pp. 31803-31806, microfiche.

Cooperation Council, consisting of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and United Arab Emirates, "condemned this brutal Iraqi aggression against the fraternal state of Kuwait."[112] Regionally as well, the European Community on August 5, 1990, imposed a boycott of all oil imports from Iraq and Kuwait and also imposed an embargo against all arms going to Iraq or Kuwait.

The United Nations Security Council then enacted, on August 6, 1990, Resolution 661, imposing an embargo on the import of "all commodities and products originating in Iraq or Kuwait exported therefrom after the date of the present resolution," and imposing an embargo on the export of

> any commodities or products, including weapons or any other military equipment, whether or not originating in their territories but not including supplies intended strictly for medical purposes, and, in humanitarian circumstances, foodstuffs, to any person or body in Iraq or Kuwait.[113]

The United States decided to undertake maritime interception operations based upon the inherent right of collective self-defense, following a Kuwaiti request, and based upon this resolution. This decision was problematic in that the language of the resolution did not specifically authorized unilateral, or, for that matter, even multilateral, interception operations. All the resolution did was call for an embargo of both imports and exports of Iraq and Kuwait. Nevertheless, the United States

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[112]Letter from the Permanent Representative of Oman to the United Nations addressed to the Secretary-General (Aug. 3, 1990), U.N. Doc. S/21430 (1990).

[113]S/RES 661 (1990).

construed the resolution most broadly and chose to "interdict any tanker approaching an oil terminal and instruct its captain to leave the area, citing enforcement powers granted by [Resolution 661]."[114] Significantly, other nations, including Great Britain, similarly construed the resolution and sent warships to the area. On the other hand, some nations, most vociferously Cuba, construed the resolution more narrowly and urged the Security Council to condemn any unilateral enforcement actions.[115] U.N. Secretary-General Perez de Cuellar seemed to agree with the Cuban position when he said that "only the United Nations, through its Security Council Resolutions, can really decide about a blockade."[116] It could be argued that, despite his misuse of terminology, he was correct, given the language of Articles 41 and 42 of the Charter. Specifically, Article 41 allows the Security Council to take action, short of armed force, to "give effect to its decisions."[117] Next, Article 42 allows

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[114]Molly Moore, "U.S. May Seek Multinational Blockade Force," Washington Post, 7 August 1990, Section A, pp. 1, 14.

[115]Most notably, Cuba, then a temporary member of the Security Council and clearly an important participant in this process, criticized unilateral action. See, United Nations Security Council Official Records, 46th Sess., 2934th mtg., U.N. Doc S/PV 2934 (1990): 24-25. Significantly, Cuba's response resulted to some extent from its experience with such action by the United States in October 1962. See, discussion in Chapter II, supra.

[116]Thomas M. Franck and Al Kamen, "American Blockade is Criticized at U.N.," Washington Post, 14 August 1990, Section A, p. 1.

[117]Sohn, Basic Documents, 11.

the Security Council, where action under Article 41 has been deemed inadequate, to:

> take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.[118]

Clearly, then, the Charter envisions U.N. action once the Security Council has undertaken responsibility to resolve the dispute. Article 51 provides little, if any, support for the view that a nation always can rely upon the inherent right of individual and collective self-defense since such is permitted only "until the Security Council has taken measures necessary to maintain international peace and security."[119]

In Chapter III it was noted that the Charter provides a system for dispute resolution, and favors beginning at the least aggressive level. In short, it favors a graduated response. Once the Security Council acts under Chapter VII, as it did in enacting Resolution 661, it has assumed responsibility for the situation, and unilateral action is normally no longer an option.[120] Here, Resolution 661 provided action through the peaceful embargo of trade, and did not specifically authorize military enforcement actions. Clearly, had such been envisioned by the Security Council, the Security Council would have directed

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[118]Ibid. (Emphasis added).

[119]Ibid, 12-13. See, discussion in Chapter III, supra, regarding this particularly difficult point in international law since the formation of the United Nations.

[120]See, discussion in Chapter III, supra.

it in the resolution in accordance with Article 42 of the Charter.[121] The resolution, on the other hand, also contained the following language: "The Security Council . . . Affirm[s] the inherent right of individual or collective self-defence, in response to the armed attack by Iraq against Kuwait, in accordance with Article 51 of the Charter."[122] Moreover, it stated: "[N]othing in the present resolution shall prohibit assistance to the legitimate Government of Kuwait."[123] Thus, it would seem as if the Security Council intended for Kuwait and it allies to act under the customary law of self-defense, in which case U.S. and British action in unilaterally imposing enforcement action of Resolution 661 was lawful.[124]

In any case, the United States and Britain sent warships to the Persian Gulf and Red Sea and began an operation by which they intercepted commerce both inbound to and outbound from Iraq and Kuwait. (See Map 1, following page.) For a short period, this "unilateral" action resulted in difficulties. On August 18,

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[121]Article 42 specifically authorizes the use of blockade to ensure enforcement of Article 41 sanctions. This, then, is part of the stepped-up scheme by which the U.N. expects to resolve disputes.

[122]S/RES/661 (1990).

[123]S/RES/661(1990).

[124]Of course, it is likely that U.S. policy-makers took advantage of creative ambiguity in helping to craft the language of Resolution 661. After all, the United States led the international response to the Iraqi invasion, and its actors were savvy enough to get enough language to allow for action but not so much to preclude a unilateral response. This allowed for maximum flexibility in response while the multilateral issues and support were sorted out.

1990, USS REID (FFG 30) intercepted the Iraqi oil tanker, AL KHANAQIN, which was transiting Iranian territorial waters in an obvious attempt to avoid the interception operation. Based upon her deep draft, REID determined she was fully loaded as she made a course toward Iraq. REID forced the AL KHANAQIN to change course to the southwest, and her master claimed she was headed for Aden. Before she could enter Omani territorial waters REID fired 25-mm and .76-mm warning shots across her bow. The AL KHANAQIN continued to evade REID. REID continued to track the AL KHANAQIN until USS GOLDSBOROUGH (DDG 20) took over. Ultimately, the AL KHANAQIN was allowed to proceed when Yemen made it known that it would support the U.N. resolutions and that it would not allow the AL KHANAQIN to offload her cargo.[125] This action led to Iraqi condemnation based upon its view the United States had imposed "an economic blockade by force of arms against Iraq," and that such was "an act of war under world norms and international law."[126] Were it not for the U.N. Resolution, which was sufficiently ambiguous to allow for unilateral action, Iraq may have been correct. As it was, the U.S. action fell within its broad reading of Resolution 661, and there was little outpouring of sympathy for Iraq. Further U.S. action, however, irritated

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[125]CDR Tom Delery, USN, "Away, the Boarding Party," 117 U.S. Naval Institute Proceedings, (May 1991): 67; William Claiborne, "U.S. Ships Fire Warning Shots at Iraqi Tankers; Baghdad Escalates Threats Against Foreigners," Washington Post, 19 August 1990, Section A, pp. 1, 30.

[126]Claiborne, "U.S. Ships" Washington Post, 19 August 1990, Section A, p. 30.

PERSIAN GULF
MIOS

MAP 1

other nations. For example, Jordan was hard hit by the interception operations, and complained to the U.N. about U.S. actions.[127]

The decision by U.S. policy-makers to avoid attacking the recalcitrant Iraqi vessels was part of its effort to convince the U.N. to allow just such action. It was believed at the time that unilateral forcible action would have resulted in a failure to build an international consensus for such action.[128] Less than a week later, the U.N. Security Council passed Resolution 665, which called upon:

> member states cooperating with the Government of Kuwait which are deploying maritime forces to the area to use such measures commensurate to the specific circumstances as may be necessary under the authority of the Security Council to halt all inward and outward maritime shipping in order to inspect and verify their cargoes and destinations and to ensure strict implementation of the provisions related to such shipping laid down in resolution 661 (1990);

and invited member states:

> accordingly to co-operate as may be necessary to ensure compliance with the provisions of resolution 661 (1990) with the maximum use of political and diplomatic measures, in accordance with paragraph 1 above;

and requested all states:

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[127]"Letter from the Permanent Representative of Jordan to the United Nations Addressed to the Secretary-General (Aug. 20, 1990)," United Nations Security Council, Official Records, U.N. Doc. S/21571 (1990).

[128]See, Molly Moore, "U.S. Delays Action Against Iraqi Tankers," Washington Post, 20 August 1990, Section A, pp. 1, 16; Fred Barnes, "No Offense: American Military Options Kuwait," The New Republic, 24 September 1990, 15.

> to provide in accordance with the Charter such assistance as may be required by the States referred to in paragraph 1 of this resolution.[129]

Resolution 665, then, sanctioned force to ensure compliance with the interception operations, sought cooperation from member states to ensure compliance with the interception operations, and asked for assistance from all states, member states and non-member states, to ensure compliance with the interception operations. In short, Resolution 665 mooted the issues created by unilateral enforcement actions.[130] Thus, the Persian Gulf Conflict is an excellent example of a two-level legal justification. Initially, the United States, Britain, and others acted unilaterally under the inherent right of individual and collective self-defense. Later, these nations acted under the authority of the U.N. Charter. The issue of unilateral action after the Security Council acts to assume responsibility for the matter remains unanswered. In other words, was U.S. maritime interception action between 18 and 25 August 1990 legal? The short answer is yes, given the broad language contained in Resolution 661. Still, this matter remains a problem that should be studied carefully before the next such situation arises.

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[129]S/RES/665 (1990).

[130]As of the end of Desert Storm, twenty-three nations had participated in the multinational interception force. Gulf War, Final Report, 65.

B. The Federal Republic of Yugoslavia

The situation giving rise to U.N. action in the Adriatic Sea off the coast of the Federal Republic of Yugoslavia (FRY)[131] has a long and complex history. From the "Great Schism" of 1054 to the present day, the Balkans region has been a hotbed of unrest. One has only to remember the assassination in 1914 of the Austrian Archduke Franz Ferdinand and his wife in Sarajevo by a Serbian nationalist, and the consequent World War, to understand just how unstable the region can be and how this instability can effect the rest of Europe, and indeed, the world. Following World War II, Marshall Tito consolidated power under communism and quelled the unrest until his death in 1980. The nation fell apart when the Communist Party chose to allow political pluralism and that pluralism degenerated into near anarchy, only ten years after Tito's death. Fighting began almost immediately, and by September 1991, the date of the first U.N. Security Council Resolution on the FRY, it became clear to the international community that inaction risked total war within the FRY and potentially a more general conflagration with international ramifications.[132]

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[131]The current Federal Republic of Yugoslavia comprises Serbia and Montenegro. The former Federal Republic of Yugoslavia was composed of Serbia, Montenegro, Croatia, Bosnia, and Macedonia. The Federal Republic of Yugoslavia (FRY) referred to in this paper is the original incarnation.

[132]To get a sense of the passion involved in the conflict in the former Yugoslavia, see, Ambassador Edward J. Perkins, "Aggression by the Serbian Regime," U.S. Dept. of State Dispatch, (8 June 1992): 448, regarding U.N. Security Council Resolution 757 (1992), in which the Ambassador identifies the "brutal aggression"

Recognizing the crisis as a serious one, the United Nations Security Council took action on September 25, 1991, when it enacted Security Council Resolution 713, which decided, under Chapter VII, that:

> for the purposes of establishing peace and stability in Yugoslavia, [all States shall] immediately implement a general and complete embargo on all deliveries of weapons and military equipment to Yugoslavia until the Security Council decides otherwise.[133]

At this time, however, there was no enforcement mechanism for the embargo. Understanding that the crisis would continue unabated without further action, the Security Council enacted Resolution 757 on May 30, 1992. In pertinent part, it required all States to prevent:

> (a) The import into their territories of all commodities and products originating in the Federal Republic of Yugoslavia (Serbia and Montenegro) exported therefrom after the date of the present resolution;
>
> (b) Any activities by their nationals or in their territories which would promote or are calculated to promote the export or trans-shipment of any commodities or products originating in the Federal Republic of Yugoslavia (Serbia and Montenegro). . . .
>
> (c) The sale or supply by their nationals or from their territories or using their flag vessels or aircraft of any commodities or products, whether or not originating in their territories . . . to any person or

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and the "campaign of terror" wrought by Serbia and Montenegro. He concludes that, "Down the road of continued conflict lies ruin." This sort of rhetoric is typical of international condemnation of Serbian and Montenegrin action in the former Yugoslavia. However, it should be noted that Security Council Resolution 757 (1992) states: "Noting that in the very complex context of events in the former Socialist Federal Republic of Yugoslavia all parties bear some responsibility for the situation."

[133]S/RES 713 (1991).

body in the Federal Republic of Yugoslavia (Serbia and Montenegro).[134]

Based upon this language, both the North Atlantic Treaty Organization (NATO) and the Western European Union (WEU) began maritime operations to "monitor" the flow of commerce into and out of the FRY.[135] (See Map 2, following page.)

These operations, Operation Maritime Monitor (NATO) and Sharp Vigilance (WEU), did only what their respective names imply--they monitored and vigilantly observed compliance/non-compliance with U.N. Security Council Resolutions 713 and 757.[136] Boardings, inspections, and diversions were not authorized. The sole function of the interception forces was to interrogate vessels, inform those vessels of any violations of Resolutions 713 and 757, and report results.[137] Of course, given such limited authorization, violations were predictable. By establishing proof of such violations, however, these two

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[134]S/RES 757 (1991).

[135]In Resolution 757, the Security Council recalled "it primary responsibility under the Charter of the United Nations for the maintenance of international peace and security," then further recalled "the provisions of Chapter VIII of the Charter of the United Nations, and the continuing role that the European Community is playing in working for a peaceful solution in Bosnia and Herzegovina." Clearly, the U.N. at this time (i.e., May 1992) considered regional action under Chapter VIII to be critical to the resolution of the crisis. Whether this U.N. view prompted NATO and WEU action or NATO and WEU pressure prompted the U.N. view is not determined.

[136]See, Admiral J. M. Boorda, USN, "Loyal Partner: NATO's forces in support of the United Nations," 39 NATO's Sixteen Nations (January 1994): pp. 8-12.

[137]Ibid., 9.

ADRIATIC
MIOS

MAP 2

initial operations laid the groundwork for future, tougher resolutions to enforce the embargo.[138]

Maritime Monitor and Sharp Vigilance provided sufficient information about violations to enable, in November 1992, the Security Council, "[a]cting under Chapters VII and VIII of the Charter of the United Nations," to pass Resolution 787, which called upon all States,

> acting nationally or through regional agencies or arrangements, to use such measures commensurate with the specific circumstances as may be necessary under the authority of the Security Council to halt all inward and outward maritime shipping in order to inspect and verify their cargoes and destinations and to ensure strict implementation of the provisions of resolutions 713 (1991) and 757 (1992).[139]

Out of this resolution came NATO's Operation Maritime Guard and WEU's Operation Sharp Fence.[140] Obviously, Resolution 787 called upon states to actually enforce Resolutions 713 and 757 rather than simply monitor the seas off the coast of the FRY. This is precisely what NATO and the WEU did when they put Maritime Guard and Sharp Fence into effect. As NATO and the WEU attempted to enforce the sanctions, however, violators discovered that they could defeat the enforcement by transiting the territorial seas of Montenegro. Once again, Maritime Guard and Sharp Fence documented and reported the violations, and the Security Council issued Resolution 820, which stated, in

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[138]Ibid., 9.

[139]S/RES 787 (1992).

[140]Boorda, "Loyal Partner," 10.

pertinent part, that the Security Council "decides to prohibit all commercial maritime traffic from entering the territorial sea of the Federal Republic of Yugoslavia."[141]

As a result of the same resolution, Maritime Guard and Sharp Fence were combined into one operation, Sharp Guard,[142] which continues, somewhat modified, to the time of this writing. The original reason for the separate operations was France's interest in participating, but doing so without being controlled by the United States through NATO.[143] When it became clear that conducting two separate operations was inefficient and risky, France conceded and the operations were consolidated.

C. Haiti

While the history of the United States in Haiti cannot claim to go back to the Great Schism, it has been a long and complex one. The recent history of U.S. and Haitian relations, in particular, has been problematic.

Not long after Jean-Bertrand Aristide, a defrocked Catholic priest, was elected to the office of President of Haiti in early 1991, a military coup led by General Raoul Cedras forced Aristide into exile. Cedras instituted a military dictatorship. This

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[141]S/RES 820 (1993). It should be noted that here "FRY" (Federal Republic of Yugoslavia) is used in its current sense, to include only Serbia and Montenegro.

[142]Boorda, "Loyal Partner," 10.

[143]See, Captain Fabian Hiscock, RN, "Operation Sharp Guard," 82 The Naval Review (July 1994): 224.

caused, over time, a mass exodus of Haitians from their homeland in ramshackle boats. Many emigrants died by drowning or from exposure in their efforts to reach the United States. Those that survived were intercepted by U.S. Coast Guard or Navy vessels and placed into refugee camps.

This general unrest led President Bush to declare, on October 4, 1991, in Executive Order No. 12775, a national emergency to defend against what the President considered to be a threat to the national security, foreign policy, and economy of the United States.[144] This order blocked U.S. financial dealings with Haiti. Executive Order No. 12779, of October 28, 1991, added trade sanctions against Haiti, prohibiting the export to Haiti of U.S. manufactured goods, technology, and services and further prohibiting the importation of Haitian manufactured goods and services.[145] This situation continued until June 30, 1993, when President Clinton, in Executive Order No. 12853, expanded the sanctions by blocking assets of Haitian nationals that had supported the Cedras regime. Moreover, that order implemented U.N. Security Council Resolution 841 of June 16, 1993 by prohibiting U.S. arms and petroleum trade with Haiti.

Interestingly, sanctions were lifted in August 1993 as a result of what was perceived by the world community to be a move

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[144]U.S. President, Executive Order, "Prohibiting Certain Transactions with Respect to Haiti," Federal Register (7 October 1991) vol. 56, no 194, pp. 50641, microfiche.

[145]U.S. President, Executive Order, "Prohibiting Certain Transactions with Respect to Haiti," Federal Register (30 October 1991) vol. 56, no. 210, p. 55975, microfiche.

by Cedras toward reinstituting the democratically elected Aristide government. In fact, U.N. Security Council Resolution 841 (1993) suspended the petroleum and arms sanctions. Furthermore, the Organization of American States encouraged its member nations to suspend their respective trade embargoes. The United States, for its part, suspended all sanctions on August 31, 1993. Agreement was reached with the Cedras regime in what was called the Governor's Island Agreement.[146] However, by mid-October 1993, it was obvious that Cedras would not honor his commitments in the agreement,[147] and the United Nations Security Council issued Resolution 873 (1993), which terminated the suspension of the sanctions. President Clinton, in a series of Executive Orders, reinstituted U.S. sanctions. He also ordered a six-ship task force to deploy to the coast of Haiti.

The U.N. Security Council issued Resolution 875, which called upon Member States, acting either nationally or through regional organizations, to halt all maritime shipping inbound to Haiti for inspection for arms or petroleum and, if necessary, to order diversion. This resolution led to the creation of the

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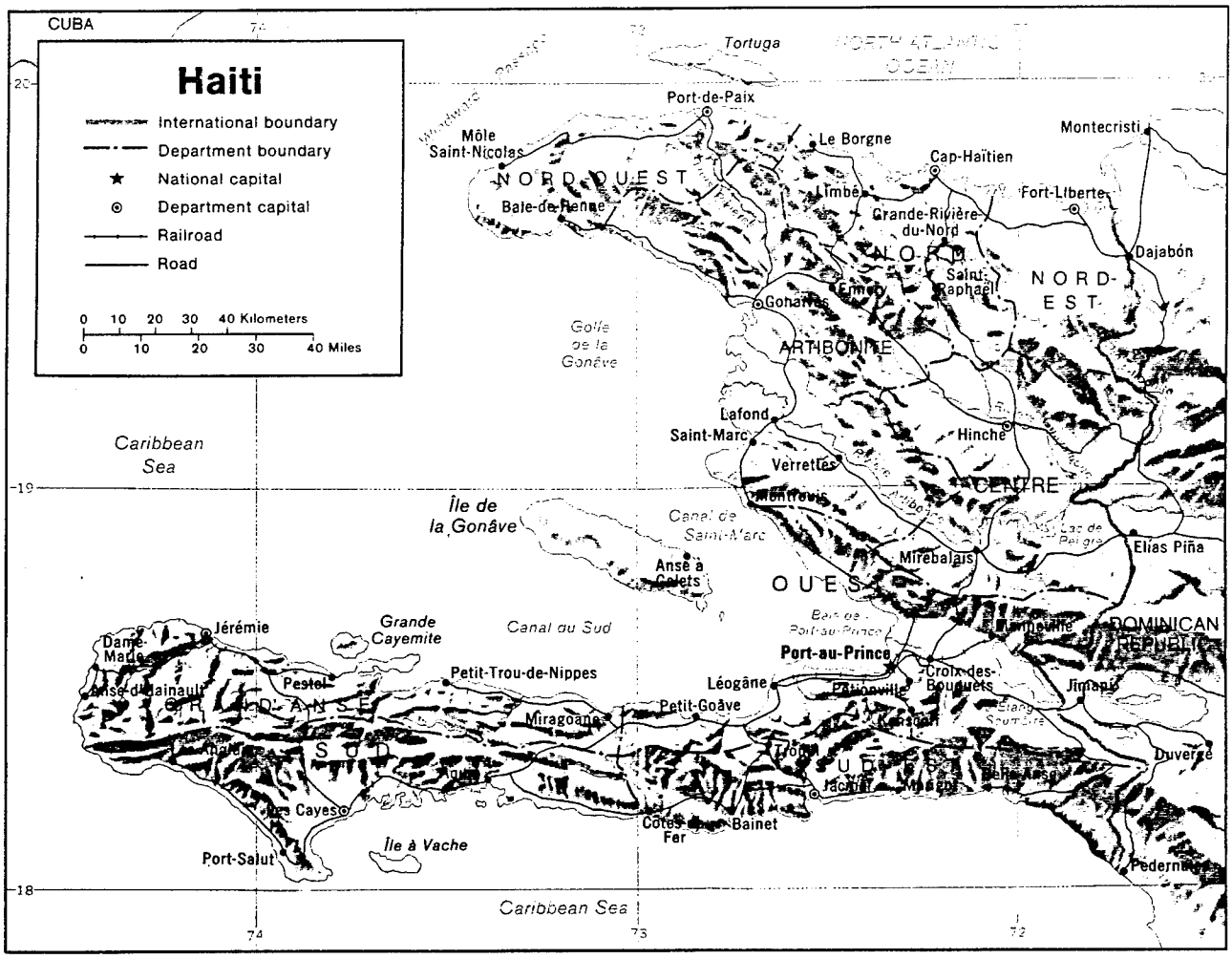
[146]This agreement is discussed in some detail in: Ian Martin, "Haiti: Mangled Multilateralism," Foreign Policy (Summer 1994): 72.

[147]Indeed, this was most evident when USS HARLAN COUNTY, which was to disembark at Port-au-Prince U.S. and Canadian troops assigned to a U.N. training mission, was "driven" from port by "a hostile demonstration of armed thugs." Ibid. This was a terrible embarrassment for the United States and United Nations, and was just one of a series of serious incidents, including the murder of Aristide's minister of justice and the withdrawal of Organization of American States/United Nations human rights observers. Ibid., 73.

HAITI
MIOS



MAP 3

THE MAP BORDERS ROUGHLY APPROXIMATE THE HAITI MIOS BOX

multinational maritime interception force off Haiti. The Haiti MIOs began in earnest in 1994.

By July 1994, it became apparent that sanctions alone would be inadequate to restore democracy in Haiti. Therefore, the Security Council issued Resolution 940 (1994), authorizing the "use of all means necessary" to restore Aristide to power in Haiti. (See Map 3, following page.) The United States led a twenty-six nation coalition effort to bring about compliance with this resolution, and on September 18, 1994, U.S. armed forces deployed to Haiti to restore Aristide to power. Through last minute negotiations a peaceful resolution to the crisis was achieved. Cedras agreed to step down and allow Aristide to return to power. On September 25, Aristide requested the lifting of all economic sanctions against Haiti. The Security Council, in Resolution 944, terminated all sanctions, effective upon Aristide's return to Haiti in October 1994. Aristide, did, in fact, return to Haiti in October 1994 and the sanctions were lifted.

The Haiti MIOs were considered effective, even if their national rather than integrated multinational conduct made them difficult. In any case, they are generally considered to have been part of the overall success of U.N./OAS/U.S. efforts to restore democracy in Haiti.

CHAPTER V

THE CONDUCT OF THE OPERATIONS

The United Nations provided, through Security Council resolutions, a clear legal mandate for conducting maritime interception operations in each of the three cases. The critical issues of MIOs, such as command and control, rules of engagement, and communications, however, were problematic in each case except for the Sharp Guard part of the Adriatic MIOs. While each case presents certain, limited distinctions in the conduct of operations, the critical issues were similarly resolved in each. Therefore, this Chapter discusses the conduct of all three operations as a whole, and distinguishes the key differences among them.

In short, the operations, while multilateral on their face, were primarily national in practice and none was effectively interoperable. In fact, this was by design, as the United States and most other nations, for domestic political purposes, insisted that their respective forces would not be placed under the control of either another nation's military or any U.N. entity, such as the Military Staff Committee.[148] By doing so, a

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[148]Resolution 665 represented a first for the United Nations in that it authorized military action under unilateral rather than U.N. control. John M. Groshko, "U.N. Approves Use of Force for Iraqi Embargo," Washington Post, 26 August 1990, Section A, p. 1.

critical and pervasive potential problem developed. Command and control, and consequently, most other key aspects of the maritime interception operations, were conducted nationally, without common rules of engagement (ROE), communications, or language, and without an open sharing of intelligence, doctrine and publications, or public affairs efforts.[149]

An excellent analogy for the failures of combined interoperability is found in one of the catalysts which forced a move toward joint interoperability within U.S. forces: the failure of Operation Eagle Claw. In analyzing the Desert One operation[150], Colonel Charles A. Beckwith, Commander of the Delta Force assault team, characterized the operation as follows:

> If Coach Bear Bryant at the University of Alabama put his quarterback in Virginia, his backfield in North Carolina, and his defense in Texas, and then got Delta Airlines pick them up and fly them to Birmingham on game day, he wouldn't have his winning record. . . . In Iran we had an ad hoc affair. We went out, found bits and pieces, people and equipment, brought them together occasionally and then asked them to perform, but they didn't necessarily perform as a team.[151]

It is the same with MIOs conducted thus far. Each nation wants to participate, but no nation wants to surbordinate its forces to the control of a single authority. As a result, the conduct of

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[149]As of the end of Desert Storm, some twenty-two nations had participated in the multinational interception force. Gulf War, Final Report, 65.

[150]Desert One is the common name for Operation Eagle Claw, which was the official code name for the operation where U.S. forces attempted to rescue the U.S. hostages in Teheran, Iran on 24 April 1980.

[151]Charles A. Beckwith and Donald Knox, Delta Force (New York: Harcourt Brace Jovanovich, 1983), 294.

the operations have been like the imagined Bear Bryant team. The various national forces do not practice together much as a team, but on game day, they are expected to perform as one. Beckwith's condemnation of "ad hoc-ary" in Desert One was echoed almost unanimously by those in attendance at the Twelfth International Seapower Symposium in their discussions regarding multinational MIOs. As Vice Admiral Buis stated: "We will operate together in the future, so let us prepare."[152] By failing to prepare, the forces at sea will be left with the burden of not only conducting the operation, but conducting it without benefit of practiced teamwork. If, as U.S. doctrine maintains, "Joint Warfare is Team Warfare," it follows that combined warfare is team warfare.[153] As should become clear in this and the following Chapter, multinational MIOs have not practiced team warfare. However, the actual daily detection, surveillance, query, boarding, and inspection were consistent, as most nations developed methods and learned from one another through cooperation. These methods are discussed briefly next. The key aspects of MIOs are analyzed later in this paper.

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[152]Vice Admiral Nico W.G. Buis, Royal Netherlands Navy, remark during panel discussion, "Cooperative Security at Sea," Twelfth Symposium Report, 68.

[153]U.S. Dept. of Defense, Joint Warfare of the U.S. Armed Forces, Joint Publication 1 (Washington, D.C., 1991), cover quote.

A. The Day-to-Day Operations[154]

Nations developed the methods for conducting the day-to-day techniques of MIOs during the Persian Gulf Crisis. Initially, the techniques were wholly ad hoc. Over time, however, the various nations involved, through coordination meetings and the informal sharing of experiences, developed consistent, practical techniques for detection, surveillance, query, boarding, inspection, and clearance/diversion.[155] The best brief description of this aspect of MIOs is the following:

> M[aritime] I[nterception] O[perations] centered on surveillance of commercial shipping in the Persian Gulf, the Gulf of Oman, the Gulf of Aden, the Red Sea, and the eastern Mediterranean Sea, supported by worldwide monitoring of ships and cargoes potentially destined for Iraq, Kuwait, or Al-'Aqabah. When merchant vessels were intercepted, they were queried to identify the vessel and its shipping information (e.g., destination, origination, registration, and cargo). Suspect vessels were boarded for visual inspection, and, if prohibited cargo were found, the merchant ship was diverted. Rarely and only when necessary, warning shots were fired to induce a vessel to allow boarding by the inspection team. As an additional step, takedowns--the insertion of armed teams from helicopters--were used to take temporary control of

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[154]A key aspect to the effectiveness of economic sanctions is the necessity to stanch the flow of supplies into the target state from land borders. MIO can be effective, but if supplies reach the target state by overland routes, economic sanctions will fail. In Haiti, for example, the Dominican Republic agreed to allow a multinational force enforce the U.N. sanctions on its border with Haiti.

[155]This terminology is the author's. There are alternatives to this terminology, but it is important to avoid confusing these terms with those of visit and search. There is no question that the actual practice will closely resemble the methods of visit and search. Cf., NWP 9, ¶7.6.1.

uncooperative, suspect merchant vessels that refused to stop for inspection.[156]

As should be clear from even this brief description, multilateral MIOs would be very difficult to conduct without significant control of the forces involved. In a situation where the U.N. or a regional organization seeks to control a percolating conflict rather than escalate it, close control of all forces is necessary. Otherwise, a takedown team could use force that escalates the conflict, where command and control elements would not have used such force. Similarly, where one nation interprets "hostile intent" and "hostile act" differently than another nation, certain actions could lead to an undesired escalation of the conflict or to unreasonable risk to MIO participants.

An analysis of the critical aspects of MIOs will reveal their strengths and weaknesses, and will permit insight as to improvement.

B. The Critical Aspects of MIOs

The aspects critical to all MIOs are command and control, rules of engagement, communications, doctrine and publications, language, intelligence, logistics, and public affairs management. Where problems develop in any of these areas, the success of the

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[156]Gulf War, Final Report, 53. For lengthier, more detailed discussions of the day-to-day operations, see, Delery, "Boarding Party!" 65; "Severing Saddam's Lifeline: Maritime Interception Controls the Flow to Iraq," All Hands (Special Edition, 1991): 10; Dalton, "The Influence of Law," 54; and, Fielding, "Maritime Interception," 1191.

operation is at risk.[157] In short, in the multinational setting, interoperability is the key. The better the interoperability of multinational forces, the greater the likelihood of success of any operation. U.S. policy seeks to achieve unity of effort, centralization of planning, and decentralization of execution through enhanced interoperability. In Clausewitzean terms, interoperability seeks to cut through the fog and friction of war. In multinational operations, there is added, self-imposed fog and friction that the alliance or coalition must overcome to achieve success. Interoperability overcomes that added fog and friction.

U.S. statements on joint and combined warfare start with the seminal principle of unity of effort. For example, Joint Publication 1 states: "Success in war demands that all effort be directed toward the achievement of common aims."[158] Without unity of effort, many of the principles of war as recognized by U.S. doctrine would be lost, and, in all likelihood, success compromised.[159] In fact, the desire for unity of effort is the

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[157]This paper analyzes only the command and control, rules of engagement, and communications aspects of MIOs, as they are representative of the interoperability problems of all of the key aspects identified. The other aspects noted are discussed only briefly as part of these three considerations.

[158]U.S. Dept. of Defense, Joint Warfare of the US Armed Forces, Joint Publication 1 (Washington, D.C.: 1991), 21.

[159]U.S. policy declares the following to be the principles of war: objective, offensive, mass, economy of force, maneuver, unity of command, security, surprise, and simplicity. U.S. Dept. of Defense, Basic National Defense Doctrine, Joint Publication 0-1 (Washington, D.C.: 1992).

basis of the recent shift in U.S. national policy toward attempts to achieve joint interoperability.

The need for unity of effort is as important to combined as it is to joint operations. U.S. military leaders recognize that "[t]here is a good probability that any military operations undertaken by the [U.S.] will have **multinational** aspects, so extensive is the network of alliances, friendships, and mutual interests established by our nation around the world."[160] The leadership also recognizes the need to **"always operate from a basis of partnership and mutual respect."**[161] Thus, as with joint operations, unity of effort is the starting point for combined operations, including MIOs.

How is this to be achieved among a diverse group of nations, each dependent upon domestic political sensitivities, each seeking the opportunity to lead its own forces, if not the whole of the coalition forces, each working from different rules of engagement, publications, training, and communications? The broad answer was provided by General of the Army Dwight D. Eisenhower, when he stated:

> Allied command depends on mutual confidence. How is mutual confidence developed? You don't command it. . . . By development of common understanding of the problems, by approaching these things on the widest possible basis with respect for each other's opinions, and above all, through the development of friendships,

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[160]Joint Warfare, Joint Publication 1, 41.

[161]Ibid., 42.

this confidence is gained in families and in Allied Staffs.[162]

More specifically, simplicity, clarity, and readiness are the key requirements for success for combined operations.[163] While unity of effort is the seminal principle for combined operations, success is also dependent upon centralized planning and decentralized execution.[164]

The critical aspects of MIOs, enumerated above, are the critical issues pertaining to unity of effort, centralized planning, and decentralized execution. In short, they determine the extent of interoperability. Significantly, all other aspects of military operations, including MIOs, flow from command and control.[165] U.S. doctrine on joint and combined operations states:

> **Sound organization** should provide for unity of effort, centralized planning, and decentralized execution. Unity of effort is necessary for effectiveness and efficiency. Centralized planning is essential for controlling and coordinating the efforts of the forces. Decentralized execution is essential because no one commander can control the detailed actions of a large number of units or individuals. [Emphasis added.][166]

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[162]Ibid.

[163]Ibid.

[164]Ibid., 36.

[165]Even the principles of war flow from sound command and control. Deficiency in command and control impacts upon at least the following, if not all, principles of war: objective, mass, maneuver, economy of force, unity of command, simplicity, and security.

[166]U.S. Dept. of Defense, Unified Action Armed Forces (UNAAF), Joint Publication 0-2 (Washington, D.C.: 1994), IV-3.

Given sound, effective command and control structure, the chance of success is enhanced significantly since all other critical aspects will follow.

Joint doctrine also states the following:

> Ensure unity of effort under the responsible commander for every objective. . . . Unity of effort, however, requires coordination and cooperation among all forces toward a commonly recognized objective, although not necessarily part of the same command structure. . . . In multinational and interagency operations, unity of command may not be possible, but unity of effort becomes paramount.[167]

It is important, then, to recognize that while unity of command is desirable, in reality it is unlikely in combined operations. Thus, unity of effort, through coordination and cooperation, becomes all the more significant. Command and control, while perhaps not unified, still plays the key role in leading participants in the necessary coordination and cooperation.

While each of the three MIOs differed slightly from the others with respect to command and control, it is safe to say that in each, operational command and control were not centralized in one commander. This is true even of the Adriatic MIOs as a whole, though not for the Sharp Guard aspect of them. Operational command and control is defined as follows:

> The exercise of authority and direction by a properly designated commander over assigned forces in the accomplishment of the mission. Command and control functions are performed through an arrangement of personnel, equipment, communications, facilities, and procedures employed by an operational commander in planning, directing, coordinating, and controlling

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[167]Joint Operations, Joint Publication 3-0, A-3.

forces while conducting campaigns and major operations in the accomplishment of the mission.[168]

In the three cases of MIOs, these functions were retained by the respective national commander for forces of his respective nation. In other words, each national commander controlled his vessels, his aircraft, his personnel, and his communications, and directed, coordinated, and controlled his forces in the conduct of the operations. This is not to say that every nation controlled its forces at all times.[169] Nevertheless, it is an accurate statement for most nations involved in the MIOs under analysis. This, of course, results from political decisions by the individual nations involved. A nation certainly could choose to allow control of its forces by another nation or U.N. entity.

There are three potential types of operational command and control of multinational forces: (1) authorization by the U.N. or regional organization (i.e., an ad hoc command and control structure based on U.N. or regional authorization of the MIOs, but which does not specifically address command and control); (2) designation by the U.N. or a regional organization of command by a single nation or regional organization; and, (3) U.N. or regional command by a designated or rotational force commander.[170] In practice, where either of the first two is

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[168]U.S. Dept. of Defense, Dictionary of Military and Associated Terms, Joint Publication 1-02 (Washington, D.C.: 1991).

[169]For example, the Islamic/Arabic nations ceded control of their respective forces to Saudi Arabia during Desert Storm.

[170]Sands, Blue Hulls, 34.

used, the choice of a force commander usually will result from a "preponderance of force" rule.[171] In other words, "the state with the largest committed force provides the operational planning framework."[172] In the third method, the U.N. or regional organization provides the operational planning framework.

The three MIOs under examination were all of the authorized variety. In each, the U.N. authorized national, alliance, or coalition action.[173] In none did the U.N. designate control by a particular nation, alliance, or coalition, though in the case of the FRY, NATO and the WEU took the lead and conducted operations with alliance forces only. As a result, command and control in each case, except, of course, the Sharp Guard aspect of the Adriatic operations, was an ad hoc arrangement. In such a situation, there are three options for the structure of command

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[171]Ibid., 34.

[172]Ibid. Sands, at 34, states that this commander will also have explicit or implicit operational control, and cites both the Korean War and Persian Gulf Crisis situations as an example of this. However, while this was true of Korea, an example of designation, a close examination of the Persian Gulf Crisis reveals that it is not true of that case, an example of authorization. See, Dept. of Defense, Doctrine for Joint Operations, Joint Publication 3-0 (Washington, D.C.: 1993), figure VI-2, at p. VI-10, which shows the coalition command relationships for Operation Desert Storm. Operational command and control was retained by each nation. Tactical control of, at least British forces, was given to the Commander-in-Chief, U.S. Central Command.

[173]The distinction between an alliance and a coalition consists of the standing nature of an alliance and the ad hoc nature of a coalition. See, Joint Operations, Joint Publication 3-0, passim; and U.S. Dept. of the Army, Operations, Field Manual (FM) 100-5, passim.

and control: parallel command, lead nation command, and a combination of the two.[174]

Parallel command is explained as follows:

> Parallel command exists when nations retain control of their deployed forces. If a nation within the coalition elects to exercise autonomous control of its force, a parallel command structure exists. Such structures can be organized with . . . [n]ations aligned in a common effort, each retaining national control.[175]

The command and control structure of the U.S. and British forces in Desert Storm exemplifies the parallel command structure. It is depicted in Figure V-1.[176]

Because of the ad hoc nature of coalitions, they often include within them forces of nations that are simply not accustomed to working with one another. As a result, command and control within coalitions can be very difficult and complex, both

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[174]Joint Operations, Joint Publication 3-0, VI-9.

[175]Ibid., VI-9. Joint Publication 3-0 seems to be mistaken when it adds, at VI-9, the following additional possibility:

> b. Nations aligned in a common effort, some retaining national control, with others permitting control by a central authority or another member force.

This would dictate a structure representing the combination structure. See, Ibid., VI-11.

[176]The Gulf Crisis coalition command structure was as follows:

> Arriving United Kingdom (UK) forces were placed under CINCCENT's operational control (OPCON), while remaining under UK command. French forces operated independently under national command and control, but coordinated closely with the Saudis and CENTCOM. Islamic forces invited to participate in military operations did so with the understanding they would operate under Saudi control.

Gulf War, Final Report, 44.

politically and militarily. Therefore, simplicity is desired in coalition command and control structure, and parallel structure "is the simplest to establish and often the organization of choice."[177] The rationale for this is as follows:

> Coalition forces control operations through existing national chains of command. Coalition decisions are made through a coordinated effort of the political and senior military leadership of member nations and forces.[178]

As is clear in Figure VI-1 (following page), the parallel command structure permitted national command of British forces on the operational level, but U.S. command and control of those forces on the tactical level.[179]

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[177]Joint Operations, Joint Publication 3-0, VI-9.

[178]Ibid., VI-9. Note that "[a]n alliance is a result of formal agreements between two or more nations for broad, long-term objectives," while "[a] coalition is an ad hoc arrangement between two or more nations for common action." Ibid., VI-1.

[179]See Joint Operations, Joint Publication 3-0, II-2 to II-3, which describes the three levels as follows:

> b. The Strategic Level
>
> . . . Strategy is the art and science of developing and employing armed forces and other instruments of national power in a synchronized fashion to secure national objectives.
>
> c. The Operational Level
>
> . . . The operational level links the tactical employment of forces to strategic objectives. The focus at this level is on operational art--the use of military forces to achieve strategic goals. . .
>
> d. The Tactical Level
>
> . . . Tactics is the employment of units in combat. It includes the ordered arrangement and maneuver of units in relation to each other and/or to the enemy in order to use their full potential.

PARALLEL COMMAND STRUCTURE

US/UK COMMAND STRUCTURE FOR OPERATION DESERT STORM

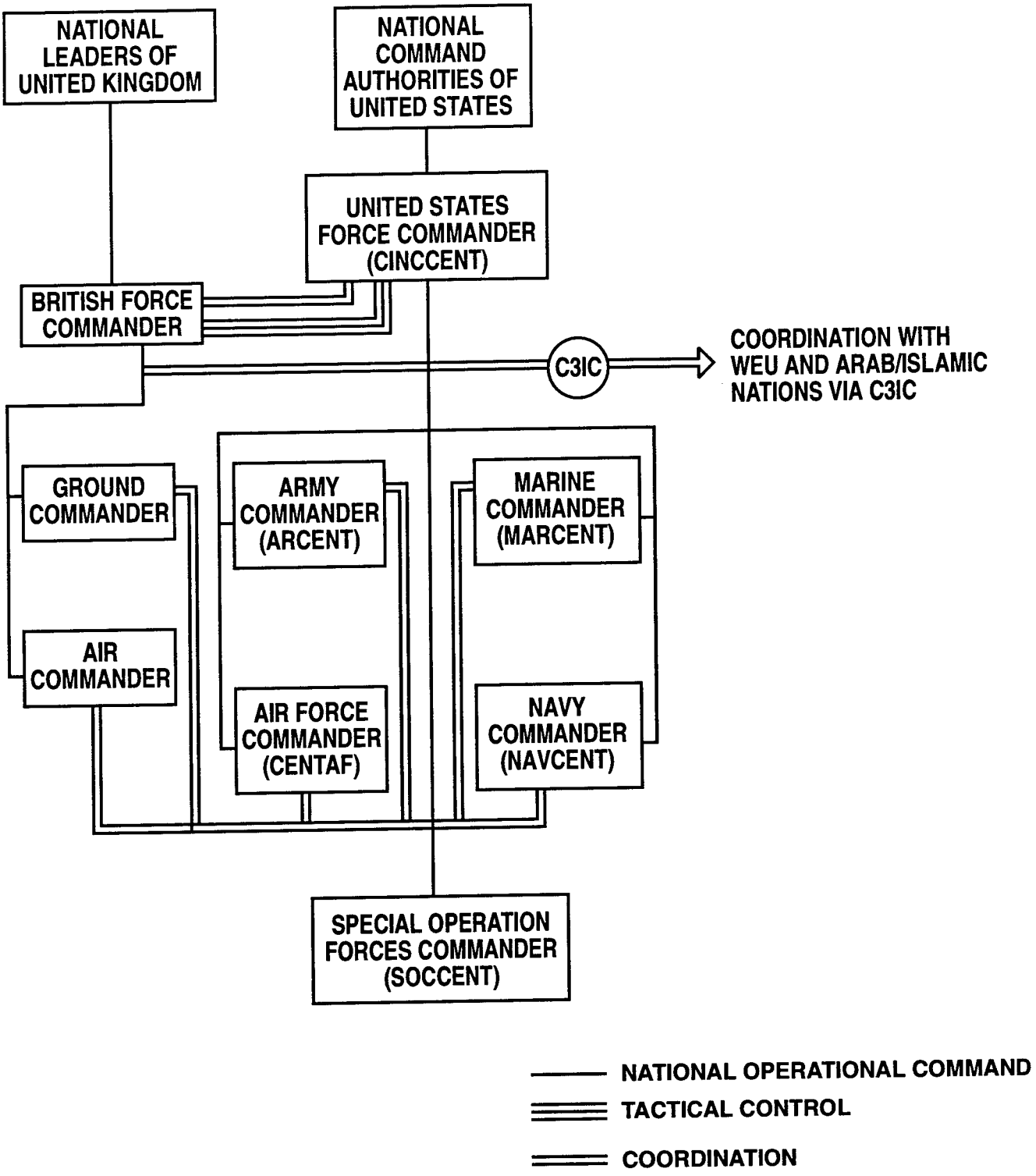

FIGURE V-1

This sort of command and control structure, however, may result in problems with communication, rules of engagement, sharing of doctrine and publications, and the other critical aspects of MIOs. For example, the vessels of one nation may not be permitted to use warning shots against a recalcitrant vessel because its national rules of engagement are too restrictive. Under some sort of centralized command and control structure, the commander would be permitted to put out common rules of engagement for all forces within the coalition, so that all involved know what to expect in certain circumstances. Of course, it is precisely for this and similar reasons that nations are reluctant to give up operational control of its forces. Few nations want a commander from another nation broadening or restricting what that nation believes to be the better rule on any particular rule of engagement.

The second command and control structure that is possible where action has been authorized but centralized command not designated, is lead nation command, which is described as follows:

> [T]he nation providing the preponderance of forces and resources typically provides the commander of the coalition force. The lead nation can retain its organic C2 [command and control] structure, employing other national forces as subordinate formations. More commonly, the lead nation command is characterized by some integration of staffs . . . determined by the coalition leadership.[180]

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[180]Ibid., VI-11.

Under this arrangement, operational and tactical command and control is ceded to a centralized command structure. There is no apparent example of this structure in overall authorized operations, though it represents the normal structure of forces engaged in U.N. or regional organization designated operations.[181]

Within Desert Storm, however, the lead nation structure was utilized by the Islamic/Arab forces. (Figure V-2, below, reflects this structure.) Under the lead nation alternative, coalition forces come under the command and control of a single nation. This makes for centralized, common, unified action, and eliminates many of the problems common to parallel command and control, such as problems with rules of engagement, communications, the sharing of doctrine and publications, reporting, and public affairs management.

At first glance, lead nation command seems to be the ideal command and control structure. Unfortunately, it is unrealistic, particularly where the operation is authorized and ad hoc, as opposed to designated. For instance, given historical reality, it is unlikely that Argentina will cede command and control of its forces to the British, or that France will cede command and

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[181]The best example of this structure is Korea, a U.N. designated operation. In Korea, all coalition forces came under a unified command under U.S. control. See, S/RES 83 (1950). Within this structure, however, subordinate commands could come under the control of a commander from another coalition force. For example, "a British Rear Admiral commanded the west coast blockade group, Task Group 95.1, throughout the war," which included a U.S. aircraft carrier. Sands, Blue Hulls, B-4.

control of its forces to the United States.[182] Therefore, it is unlikely that the lead nation command and control structure will be prevalent in MIOs, though it will be a part of many MIOs. Where such is the case, there is a combination command and control structure.

The combination command and control structure is exactly what it says it is: a combination of parallel and lead nation command and control structures. Under this structure,

> [l]ead nation and parallel structures can exist simultaneously within a coalition. This combination occurs when two or more nations serve as controlling elements for a mix of international forces.[183]

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[182]Such reluctance to relinquish command and control is normally the result of internal political pressures. It should be noted that the Argentine naval forces in the Persian Gulf Crisis came under the tactical control of the Canadian task group commander. See, Commander Juan Carlos Neves, Argentine Navy, "Interoperability in Multinational Coalitions: Lessons from the Persian Gulf War," Naval War College Review 48 (Winter 1995): 58.

[183]Joint Operations, Joint Publication 3-0, VI-11.

LEAD NATION COMMAND STRUCTURE

ARAB/ISLAMIC COMMAND STRUCTURE FOR OPERATION DESERT STORM

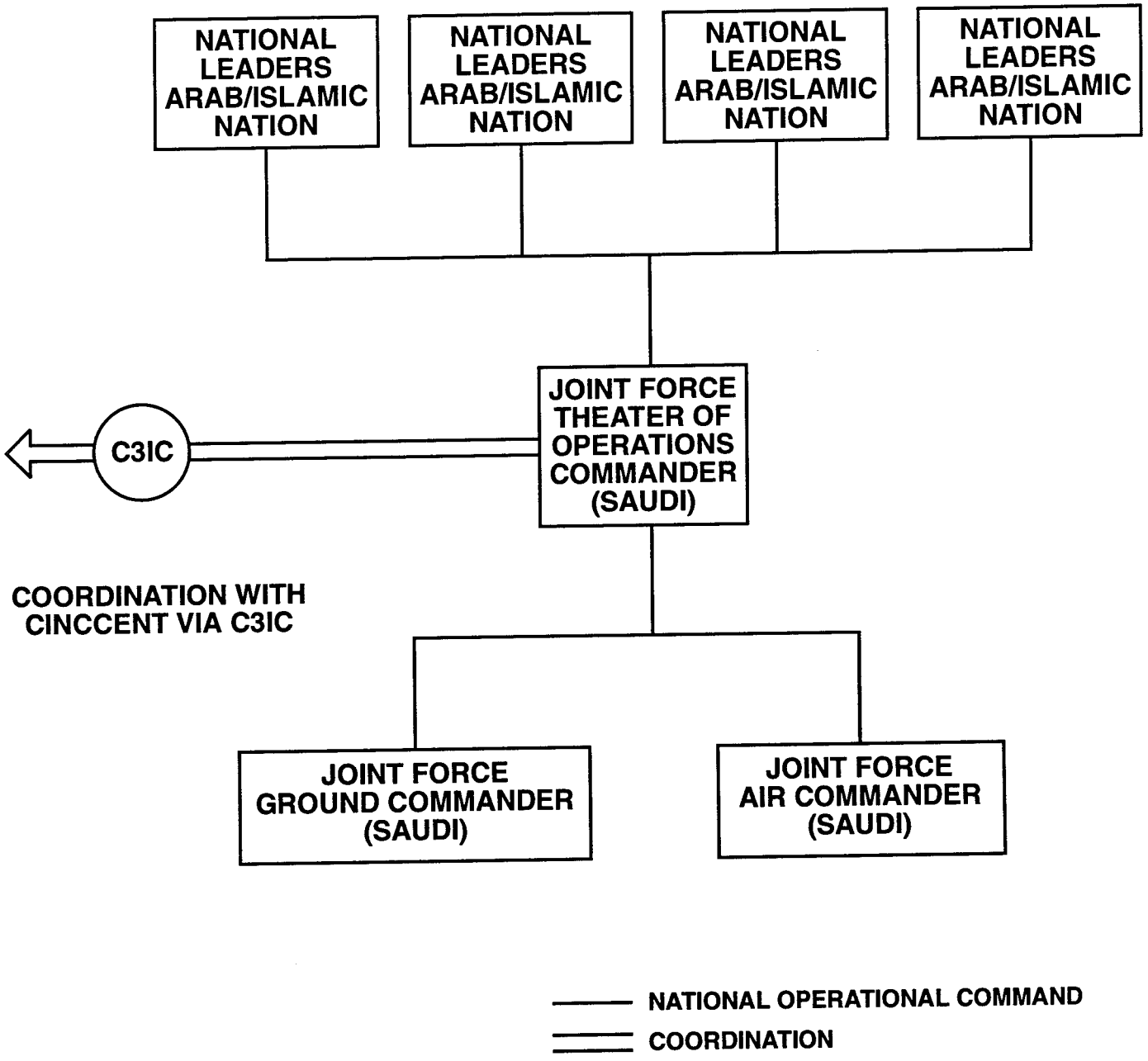

FIGURE V-2

The combined structure is as likely in future MIOs as the parallel structure. This is because some nations will prefer to place their forces under the command and control of another nation since their forces would be ineffective without such a structure. For example, where a nation desires to comply with a U.N. request for assistance, but has a small navy and can send only one or two vessels, those vessels would be of little use except within some larger command and control structure. On the other hand, within the same operation, some nations may choose to retain national command and control. In this case, the combined structure is the likely result.

All three MIOs have been conducted under the combined structure. Figure V-3 (following page) depicts the entirety of the command and control structure of Desert Storm, and, as is clear, it is a combined structure.

The combined structure, because part of the forces operate under purely unilateral command and control, can suffer some of the same problems as operations structured under the parallel method. Still, it is the likely future of large scale MIOs since a variety of nations will participate and some will relinquish command and control while others will not. Moreover, where a longstanding alliance, such as NATO, takes action it can enjoy command and control of alliance forces while, at the same time, national forces participate in the MIOs. This is the case of Sharp Guard and its fellow national operations in the Adriatic.

COMBINATION COMMAND STRUCTURE

COALITION COMMAND RELATIONSHIPS FOR OPERATION DESERT STORM

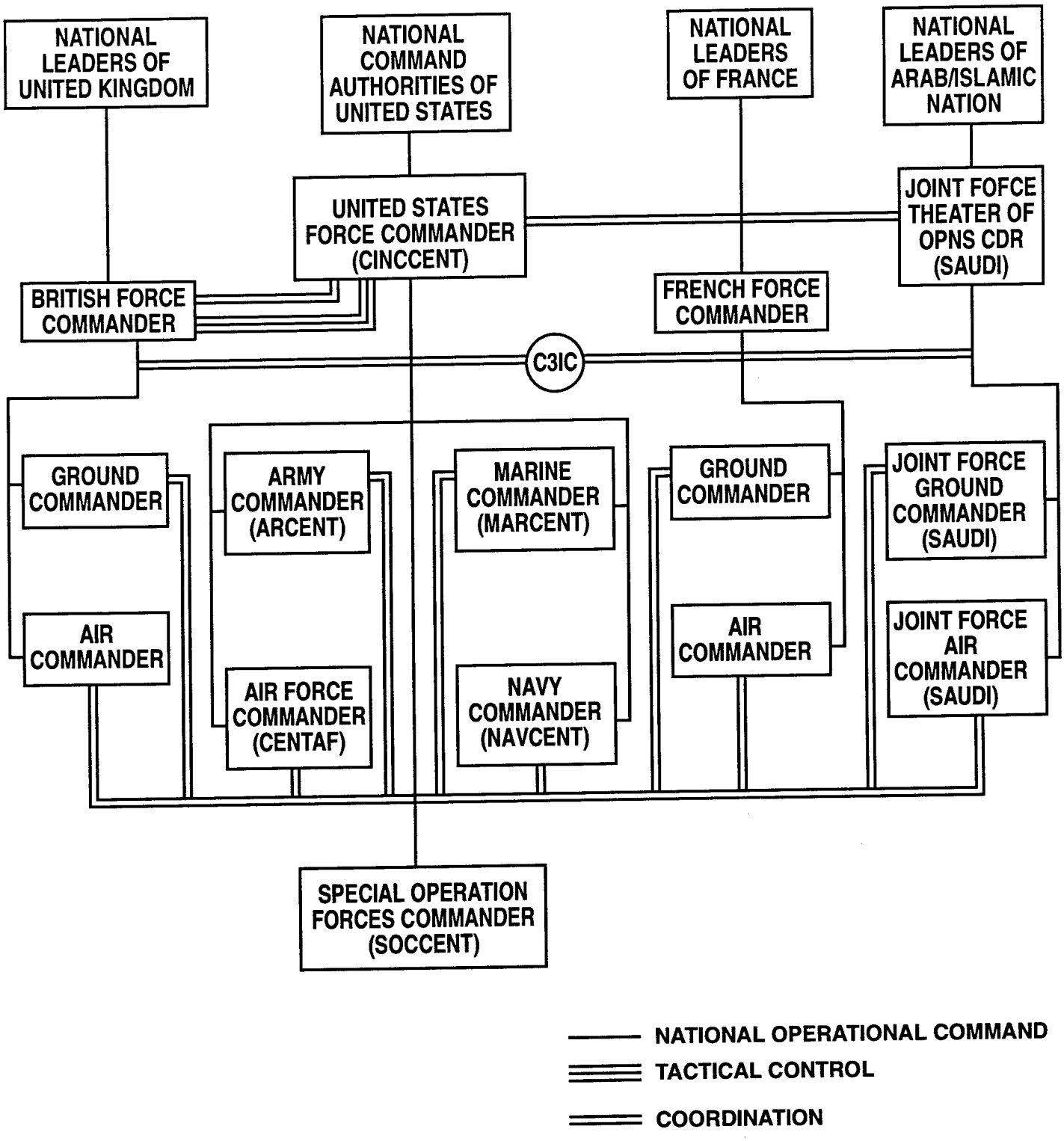

FIGURE V-3

Command and control is, of course, the foundation upon which all other aspects of any operation is built. Where there is a lead nation command and control structure, key aspects of operations will be common among participants. This is a huge advantage with respect to rules of engagement, communications, and doctrine. On the other hand, where there is a parallel command and control structure, the same critical aspects of operations are much more difficult to control. For instance, where each nation brings into an operation its own rules of engagement, it is extremely difficult for the national forces to work together.

The Sharp Guard part of the Adriatic MIOs stands out as an example of an effective centralized command and control structure. While the separate WEU and NATO operations could also be examined as examples of centralized command and control and of the benefits that flow from that centralization, the WEU/NATO combined operation, Sharp Guard, is the best example.

Operational command of all NATO/WEU operations in the Adriatic is maintained by Commander-in-Chief, Allied Forces Southern Europe.[184] He has established the following structure for Operation Sharp Guard. All WEU and NATO vessels involved make up Combined Task Force 440 (CTF 440), which is commanded by NATO Commander, Allied Naval Forces, Southern Europe (COMNAVSOUTH) as Commander, Combined Task Force 440 (CCTF

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[184]Hiscock, "Operation Sharp Guard," 224.

440).[185] Under CCTF 440 are Commander, Task Group 440.01, 440.02, and 440.03, which positions are filled by Commander, Standing Naval Forces, Atlantic (COMSTANAVFORLANT), Commander, Standing Naval Forces, Mediterranean (COMSTANAVFORMED), and Commander, Western European Union Contingency Maritime Force (COMWEUCONMARFOR), on a rotational basis.[186]

Most significantly, CCTF 440 has operational control of all of Sharp Guard. This enables him to ensure common policy on the whole range of critical aspects, including rules of engagement, doctrine, communications, even public affairs management. Moreover, because the alliance navies making up the MIOs have trained together for many years, and because they have shared doctrine, publications, and expertise, this operation was, and is, very well executed. Captain Hiscock concludes his article:

> [Operation Sharp Guard] is sophisticated, well established, well understood and professionally executed. Well-loved NATO procedures and training have been very effective in preparing ships for operations, even though there is very little NATO doctrine for carrying out embargo operations. That ships join and leave the force, operate, communicate, fuel and run ashore together, all in the same language and under common command, should tell us that little is wrong with the execution.[187]

Clearly, the advantages of centralized command and control ensure a safer, more efficient, and more effective operation. Where alliances as long-standing and close as NATO exist, MIOs can

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[185]Ibid.

[186]Ibid.

[187]Ibid., 226. Cf., notes 192 and 193, infra.

enjoy this sort of smooth conduct. Unfortunately, most situations will not allow for this, as most situations result in a multilateral response without alliance control. Even the Adriatic MIOs suffer from this defect in that national navies, using national command and control, rules of engagement, communications, intelligence, and doctrine and publications, operate forces in sanction enforcement at the same time NATO does.

The issue becomes, then, how do multilateral operations work around the problems of command and control and the consequent problems with the other key aspects of MIOs? After all, ad hoc coalition operations are much more likely than alliance operations, and while it would be nice to conclude that all MIOs should enjoy centralized command and control, and common doctrine, publications, rules of engagement, communications, and language, such is simply not likely in the foreseeable future.[188] (Figures V-1 and V-2 (preceding) reflect the nature of the three cases and of Sharp Guard, respectively.)

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[188]For an excellent discussion of coalition issues, see, "Standing Up Coalitions," Joint Force Quarterly (Winter 1993-94): 25.

FIGURE V-4

THE THREE CASES--**ANALYSIS**[189]

	Gulf Crisis	Adriatic	Haiti
Doctrine/Pubs	national	national	national
Command & Control[190]	national	national	national
ROE[191]	national	national	national
Communications[192]	national	national	national
Language	national	national	national
Intelligence[193]	national	national	national
Logistics	national	national	national
Public Relations	national	national	national

---

[189]Sharp Guard is the exception to these descriptions.

[190]Command and control is here described as national for each of the MIO because in all cases except for Sharp Guard and certain multinational relationships in the other MIO, command and control has been national within a parallel or combination command and control structure.

[191]Sharp Guard is again the exception to the rule. Additionally, there was some informal, albeit illicit, sharing of ROE between coalition members in each of the other operations, but it was always on an ad hoc basis and was never formal, open, or complete.

[192]While the coalition members communicated with one another, equipment differences and the lack of centralized command and control made communications difficult. Sharp Guard again stands out as an exception, as NATO/WEU relied upon compatible equipment and methodology.

[193]In each of the MIO, there was some sharing of intelligence, but only on the most rudimentary level.

FIGURE V-5

SHARP GUARD--THE BEST CASE

Command & Control	Centralized
ROE	Common
Doctrine/Pubs	Common
Communications	Centralized and compatible
Language	Common
Intelligence	Shared w/o compromise of national assets
Logistics	Centralized and compatible
Public Relations	Centralized

CHAPTER VI

OVERCOMING THE PROBLEMS

Clearly, even where an assembly of nations recognizes a need to work together toward a common goal, only effective leadership among those nations will allow them to actually achieve the goal. As in many other areas where it is in the interest of the United States to lead the world, it should do so in shaping future MIOs. As the President of the Naval War College, Rear Admiral Joseph C. Strasser, USN, recently wrote:

> In a world in which societies are becoming ever more interdependent but in which political power remains fragmented, whatever security or civility prevails may well depend on the character, the policies, the strength, and the will of a few great states, and the leadership for those states must come from this country.[194]

In this spirit, the United States should view the problems of past MIOs as an opportunity to shape future MIOs. If multinational MIOs are going to be a part of our future, then it makes sense to attempt to enhance their effectiveness. As introduced in the first chapter, "workarounds" is the term used to describe the solutions to the problems.[195] In short,

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[194]Joseph C. Strasser, "President's Notes," Naval War College Review 47 (Autumn 1994): 7.

[195]See note 9, supra.

workarounds recognize the problem, but work around it to, in effect, attempt to moot it.

A. Command and Control

The most critical problem to be circumvented is command and control, since all else flows from it. It is impossible to work around the formal structure of command and control, but it is possible, even necessary, to coordinate within the structure to conduct effective operations.

In the Persian Gulf Conflict, the coalition command and control structure was of a combination nature. That is, it utilized a parallel structure for the United States and United Kingdom, and a lead nation structure for the Arab/Islamic nations. Given this structure, there clearly were going to be problems with the critical aspects of the operations. Did the United States wish to share intelligence, rules of engagement, and cryptographic resources with all coalition members? If not, how were those coalition members going to deal with U.S. action based upon unshared aspects of the operation where it affected the members' domestic politics? In short, in such a situation, how does the coalition hold together and complete the mission?

The answer goes back to the ideal of unity of effort, centralization of planning, and decentralization of execution. Within a coalition operating under a combination command and control structure, this ideal may be met through the use of a Coalition Coordination, Communications, and Integration Center

(C3IC), as it was known in the Persian Gulf Crisis. There, the C3IC was:

> specifically established to facilitate exchange of intelligence and operational information, ensure coordination of operations among coalition forces, and provide a forum where routine issues could be resolved informally and collegially among staff officers.[196]

This device enabled the coalition to achieve a strong sense of unity of effort in spite of the nature of its command and control structure:

> The C3IC became a clearinghouse for coordination of training areas, firing ranges, logistics, frequency management, and intelligence sharing. Manned by officers from all Coalition forces, the C3IC served as the primary tool for coordination of the myriad details inherent in combined military operations. . . . The C3IC became a vital tool in ensuring unity of effort among Coalition forces, remaining in operation throughout Operations Desert Shield and Desert Storm.[197]

The C3IC was a critical factor in the success of Desert Shield and Desert Storm. The military and political ramifications of a mistake in the field could have been enormous. The C3IC allowed the coalition members to cooperate to the extent necessary for effective operations without a centralized command and control structure. In short, it enabled the Coalition to achieve unity of effort, even if not as unified as NATO in Sharp Guard.

There is always a place in such operations for similar, though even less formal coordination. For instance, during the Gulf Crisis, coalition members often met informally to discuss

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[196]Joint Operations, Joint Publication 3-0, VI-9.

[197]Gulf War, Final Report, 44.

rules of engagement. One such instance was described at the Twelfth International Seapower Symposium in November 1993, by Admiral Henry H. Mauz, Jr., USN, then Commander-in-Chief, U.S. Atlantic Fleet, as follows:

> [T]he issue of developing a maritime command and control arrangement was done on an ad hoc basis. It was done on the basis of individual countries' instructions, what their capitals allowed them to do and on their individual rules of engagement. We had a meeting in Bahrain . . . and we discussed our individual rules of engagement and what our capitals would allow us to do.[198]

Representatives from Coalition member nations gathered informally on a frequent basis to clarify the pressing issues of the day. These informal meetings proved to be invaluable to the success of coordinated efforts in the Gulf Crisis.

Another important measure for achieving coalition coordination within a command and control structure is the use of liaison officers among the participating navies. Of course, a combined operation dictates that the commander of the operation will enjoy staff members from the coalition partner nations. More than this, liaison officers may be utilized more extensively among the participants to ensure some commonality. While both formal and informal coordination can ease the difficulties of a decentralized command and control structure, it will not overcome these difficulties completely.

It makes sense to work out command and control issues, to the extent possible, in preparing for future MIOs. Within

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[198]Admiral Henry H. Mauz, Jr, USN, "Cooperative Security at Sea," Panel Discussion, Twelfth Symposium Report, 70.

alliances, NATO and OAS, for example, U.S. and alliance units can identify likely future MIOs and work command and control aspects of a future operation as part of a larger exercise. It should not be too difficult to identify potential trouble areas and war game them. For example, a Central America scenario may not be too far off the mark of future reality. OAS navies could examine just such a scenario and establish a likely command and control structure that would work in most of them. The participation of outside navies could also be integrated in advance to ensure smoother, more rapid use of such forces in a real-life crisis. Moreover, the political groundwork should be laid now for future command and control structure.

B. Rules of Engagement[199]

One of the outstanding problems of any multinational operation is the issue of rules of engagement. Misunderstanding about the rules of engagement for any operation can lead to disaster, even the failure of the operation to avoid escalation or the failure of the coalition to stay together. A scenario similar to the Iranian Airbus incident or USS STARK incident,

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[199]The forces of the United States formerly operated under what was known as the JCS Peacetime Rules of Engagement. During the writing of this paper, the JCS Standing Rules of Engagement were distributed. Both documents are classified as a whole. However, one of the longstanding complaints about the Peacetime ROE was that key definitions were classified and could not be openly discussed. The new Standing ROE provides unclassified definitions to certain key terms.

only involving friendly MIOs forces,[200] is not impossible to imagine. It is critical, therefore, that rules of engagement be at least widely and openly shared, if not made common. Of course, as with command and control, notions of sovereignty may prevent such cooperation.

Rules of engagement (ROE) are "[d]irectives that a government may establish to delineate the circumstances and limitations under which its own naval, ground, and air forces will initiate and/or continue combat engagement with enemy forces."[201] In other words, ROE are the rules of force by which combat forces conduct themselves in accomplishing the mission. It is often said that ROE are designed to tell the operator "Who to shoot when."[202] On the other hand, ROE may be viewed more broadly as the "actions [that] can be taken to accomplish the mission and when."[203] In any case, ROE are closely tied to the two tenets of international law mentioned earlier: necessity and

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[200]This is called "amicide." The often used term, "fratricide," is misnomer here, in that it involves an unlawful rather than accidental act. See, Shrader, "Amicide: The Problem of Friendly Fire in Modern War," U.S. Army Command and General Staff College Studies Institute Research Survey No. 1 (1982), quoted in W. Hays Parks, "Righting the Rules of Engagement," U.S. Naval Institute Proceedings 115 (May 1989): 83-93.

[201]Dictionary, Joint Publication 1-02.

[202]Timothy Carroll, Jeffrey Sands, Eric Miller, and James Warren, Rules of Engagement in Maritime Coalitions: Final Briefing, CAB 94-18.10 (Alexandria, VA: Center for Naval Analysis, October 1994), 22.

[203]Ibid.

proportionality. ROE must fit within these two tenets. For example, current U.S. policy states that:

> In defending against a hostile act or hostile intent under these SROE [i.e., Standing Rules of Engagement], unit commanders should use only that degree of force necessary to decisively counter the hostile act or hostile intent and to ensure the continued safety of US forces.[204]

This necessity/proportionality language is prevalent throughout the SROE, demonstrating further its importance. It is no more clear than when discussing the inherent right of self-defense, as follows:

> The application of armed force in self-defense requires the following two elements:
>
> > (1) Necessity. A hostile act occurs or a force or terrorist unit exhibits hostile intent.
> >
> > (2) Proportionality. The force used must be reasonable in intensity, duration, and magnitude, based on all facts known to the commander at the time, to decisively counter the hostile act or hostile intent and to ensure the continued safety of US forces.[205]

The relation of necessity and proportionality to self-defense, it is further stated as follows:

> At all times . . . the requirements of necessity and proportionality as amplified in these SROE will be the basis for the judgment of the commander as to what constitutes an appropriate response to a particular hostile act or demonstration of hostile intent.[206]

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[204]U.S. Dept. of Defense, Standing Rules of Engagement Chairman, Joint Chiefs of Staff Instruction 3121.01 (Oct. 1, 1994)(Washington, D.C.: 1994), A-6.

[205]SROE, A-5.

[206]SROE, A-4.

Clearly, ROE must conform to these historic, yet current, principles.

One thing current U.S. ROE are not designed to do is limit the inherent right of self-defense. One can hardly find a page in the SROE that does not contain the following language:

> THESE RULES DO NOT LIMIT A COMMANDER'S INHERENT AUTHORITY AND OBLIGATION TO USE ALL NECESSARY MEANS AVAILABLE AND TO TAKE APPROPRIATE ACTION IN SELF-DEFENSE OF THE COMMANDER'S UNIT AND OTHER US FORCES IN THE VICINITY.[207]

Thus, the commanding officer of a U.S. naval vessel or the pilot of an aircraft is not only authorized, he is required to act in self-defense.

While this inherent right of self-defense in the ROE seems to make mere common sense, it is much more complex in practice. As a result, the ROE provide further guidance regarding "hostile act" and "hostile intent" so that the operator may know when to act in self-defense. "Hostile act" is defined in the SROE as follows:

> A hostile act is an attack or other use of force by a foreign force or terrorist unit (organization or individual) against the United States, US forces, and in certain circumstances, US citizens, their property, US commercial assets, and other designated non-US forces, foreign nationals and their property. It is also force used directly to preclude or impede the mission and/or duties of US forces, including recovery of US personnel and vital US Government property.[208]

"Hostile intent" is defined in the SROE as follows:

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[207]SROE, A-3.

[208]SROE, A-5.

> Hostile intent is the threat of imminent use of force by a foreign force or terrorist unit (organization or individual) against the United States, US forces, and in certain circumstances, US citizens, their property, US commercial assets, and other designated non-US forces, foreign nationals and their property.[209]

U.S. forces, then, have some guidance to enable them to correctly employ their inherent right of self-defense.[210]

The discussion of self-defense and ROE is important since, in most MIOs, U.S. vessels have operated or will be operating under the Peacetime (in the past) or the Standing (in the future) ROE, and the commanding officer must act in self-defense to protect his unit. Thus, where a U.S. vessel detects an unidentified approaching aircraft while it is trying to conduct an inspection of a targeted vessel, and that aircraft is behaving in a manner that could be interpreted as threatening, the commanding officer must know what the self-defense rules and definitions are.

Moreso, however, in MIOs the ROE issues have been ones regarding the use of force for mission accomplishment, particularly the use of warning shots and disabling fire. As noted previously, most governments have maintained tight controls on the use of force in past MIOs, and it is likely they will do so in future MIOs. It is also likely that, even with broadly

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[209]Ibid.

[210]LCDR Guy R. Phillips, Canadian Forces, provides an excellent discussion of ROE in "Rules of Engagement: A Primer," The Army Lawyer (July 1993): 4. Another excellent discussion of ROE is contained in the following: Major Mark S. Martins, JAGC, USA, "Rules of Engagement for Land Forces: A Matter of Training, not Lawyering," Military Law Review 143 (Winter 1994): 1.

worded enabling documents, the ROE will be quite restrictive. There is simply no need to risk an escalatory incident during an operation designed to avoid escalation. Always, though, the commanding officer will be expected to act in self-defense.

In the MIOs conducted thus far, unfortunately, the nations involved brought to the operations their own views on ROE. In the one exception, Sharp Guard, the forces used NATO ROE, thereby overcoming the problems experienced by the *ad hoc* versions of MIOs. In all other MIOs, navies operated under national ROE. Even in Sharp Guard there are problems, as noted in the following remarks:

> One of the most confusing aspects of multinational ROE, demonstrated most clearly in the embargo operations against Serbia, was the presence in the Adriatic of French, U.S., and U.K. task groups operating independently under their own national ROE. They then rotated ships into the NATO and WEU task groups, which were operating under the hybrid NATO-WEU ROE. This complication blurred the distinction between when units were operating under which set of ROE, and caused confusion about the duties and responsibilities of national forces to protect and assist NATO-WEU forces, including ships of their own flag. Uniform Adriatic-wide ROE were clearly called for and desired by the task-group commanders.[211]

This is an interesting assessment given the view of Captain Hiscock that the Adriatic MIOs were well-conducted, specifically as proved by the smooth nature of the in-chops and out-chops.[212]

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[211]Carroll, Sands, and Warren, Final Briefing, 17.

[212]Remember that Captain Hiscock stated:

> [Operation Sharp Guard] is sophisticated, well established, well understood and professionally executed. Well-loved NATO procedures and training have been very effective in preparing ships for operations, even though

Of course, Admiral Brigstocke's view, expressed in the Introduction, contradicts Captain Hiscock as well.[213] There is wide support, in fact, for the view that ROE in a multinational operation can cause confusion and risk incident.[214]

> there is very little NATO doctrine for carrying out embargo operations. That ships join and leave the force, operate, communicate, fuel and run ashore together, all in the same language and under common command, should tell us that little is wrong with the execution.

Hiscock, "Operation Sharp Guard," 224.

[213]Admiral Brigstocke's remark is again provided in full:

> I was authorized in the Adriatic to provide my sea harriers and the Sea Shua-armed Lynx aircraft to support the NATO embargo operation and to provide surface combat air patrol. The trouble is that when the aircraft took off from my carrier, they were under UK national rules of engagement, which differed markedly from the NATO rules of engagement for the embargo operation. So, in mid-flight, with twenty-two year old, highly inexperienced, gung-ho pilots in the cockpit, those aircraft changed their ROE and changed their commander, halfway between me and flying over the force just off the Montenegrin coast.

Brigstocke, remark during panel discussion, "Cooperative Security at Sea," Twelfth Symposium Report, 68.

[214]See generally, Eleventh Seapower Symposium Report and Twelfth Seapower Symposium Report. Cf., Captain Lyle G. Bien, USN, "From the Strike Cell," U.S. Naval Institute Proceedings 117 (June 1991): 59, in which he writes:

> Joint [combined] operations worked well [in the Gulf]. Most of us had some experience and training working with our sister services and NATO allies, but none of us had ever been involved with a 28-nation coalition. For that aspect of the war to have hummed along so free of service and national parochialism is a great tribute to all levels of leadership in Desert Storm. . . . [T]he whole scheme worked and worked well, partly because of lesson we learned in places like Grenada, but even more in multinational-multiservice exercises like Team Spirit and PacEx-98.

The fact remains that without centralized command and control, ROE will tend to be problematic due to the variance of national views. In describing the Persian Gulf MIOs, Commander Jane Gilliland Dalton, JAGC, USN, stated:

> The most serious problem confronting the coalition navies with respect to command and control was the inability of the Western European Union to coordinate its naval activities. The difficulty appeared to stem from the desire of the Union to present an autonomous, European initiative, but the reluctance of the member states to place their navies under Western European Union direction. For example, a month after the Western European Union met in Paris to coordinate Gulf naval operations, the ships of the member states still followed different Rules of Engagement. One Union official stated, "British ships can fire on ships suspected of breaking the embargo against Iraq, French ships can fire only warning shots, and the others will not even do that." Eventually, the Western European Union procedures were coordinated and common agreement was reached on ROE [for Western European navies].[215]

The problem was described at the Eleventh International Seapower Symposium, as follows:

> To train a weapon means something completely different for the Brits than it does for the United States. One country says that to train is to turn your weapon around, and other one says that to train might be to aim. So there is a lot to be done certainly in the field of a clear definition of hostile intent and hostile act.[216]

What, then, can be done to work around the problem of ROE in multinational MIOs? As with command and control, the starting place for workarounds is coordination. In the Persian Gulf MIOs, monthly meetings among the coalition participants took place

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[215]Gilliland Dalton, "Influence of Law," 50.

[216]Vice Admiral van Foreest, Netherlands Navy, remark during panel discussion," Coalition Maritime Operations, Eleventh Seapower Symposium Report, 64.

aboard rotating flagships.[217] Through these monthly meetings, ROE was shared, albeit illicitly. This enabled each of the participating navies to know what the others were doing with respect to ROE, even if it did not bring about commonality.

The other mechanism used in all three MIOs is also one of common sense: utilize the vessels of each navy to take advantage of their ROE. For instance, those navies with robust ROE should enforce areas where the potential threat is higher since navies with less robust ROE could find themselves endangered in such an area. Concomitantly, navies with less robust ROE should enforce areas where there is little, if any, threat of force. In this way, each nation can participate in its own, best way.[218] The advantage, of course, is the maintenance of the multinational flavor of the operation and its attendant political legitimacy.

In Sharp Guard, the NATO and WEU forces used NATO ROE. Vice Admiral Foreest observed that with respect to ROE, "within NATO we have our act very, very well together."[219] This commonality with respect to ROE allows for predictability for the operators.

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[217]Gilliland Dalton, "Influence of Law," 49.

[218]Ibid. Gilliland Dalton, at 49, describes the process as follows: "Patrol boxes were assigned to ships to maximize efficiency based on the size of the vessel and its crew, the capabilities of the vessel, and any special constraints imposed by NCAs." See, Admiral Henry H. Mauz, Jr. USN, who remarked: "Countries who had very restrictive rules of engagement and whose platforms, whose ships, were not fully capable of dealing with an Exocet threat, for example, were given one kind of mission. . . ." Remark during panel discussion, "Cooperative Security at Sea," Twelfth Seapower Symposium Report, 70.

[219]van Foreest, remark during panel discussion, "Coalition Maritime Operations," Eleventh Seapower Symposium Report, 64.

Each can know what to expect from the others. While this is the ideal, it is unrealistic. Domestic political pressure within a nation can simply be insurmountable on such an issue. Vice Admiral Foreest concluded his remarks at the Eleventh International Seapower Symposium, as follows: "[There] will never be, in a coalition effort, a common set of rules of engagement sponsored by the United Nations. I think it will remain a national obligation."[220] Nevertheless, few would argue against making an effort towards the creation of MIOs standing rules of engagement for multinational operations. The details of such ROE should be no secret. After all, given the nature and intent of MIOs as an early step in enforcement and coercion, they are intended to be peaceful whenever possible. By sharing MIOs ROE with the world, potentially escalatory incidents may be avoided. This sharing was done, in a limited way, in the FRY, when NATO released to the Serbs several notions of what NATO forces would consider to be hostile intent. This is not to say, however, that all ROE should be shared openly. It would be unwise to allow an adversary to know what actions would be taken in every situation. But those rules that govern most of MIOs could be disclosed with little, if any, risk to the security of national and coalition forces.

It must be noted that MIOs have thus far been, for the most part, peaceful. In the Gulf for instance, Iraq's navy simply did not pose a viable threat to coalition forces. In fact, in the

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[220]Ibid.

Gulf MIOs, there were, between August 17, 1990 and 28 February 1991, only eleven warning shots fired, no use of disabling fire, only eleven takedown actions, and a mere 51 diversions of vessels.[221] Most of the warning shots were fired by U.S. vessels early in the operation, even before August 25, 1990, the effective date of U.N. Security Council Resolution 665. In the Adriatic MIOs, there were no warning shots or disabling fire used through December 28, 1994.[222] The Haiti MIOs likewise saw no use of warning shots or disabling fire.[223]

Where MIOs are conducted in a more hostile environment, and command and control and rules of engagement become more vital, shared or common ROE among coalition members will be critical to success. As stated by the Argentine Navy Chief of Staff regarding Desert Storm: "Had opposition existed, the different components of the multinational force would have had to apply more homogenous criteria with respect to two fundamental aspects: command and control and the rules of engagement."[224]

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[221]Gulf War, Final Report, 60.

[222]NATO Fact Sheet on Operation Sharp Guard, available through AFSOUTH Public Information, Viale della Liberazione, 80124 Naples, Italy (Tel.: (39) (81) 721 2235; Fax: (39) (81) 721 2973; E-Mail: AFSOUTHPA@cpo-link.eucom.mil).

[223]This is based upon review of the United States Atlantic Command files and the following: Major Karl Woods, USMC, Assistant Staff Judge Advocate, United States Atlantic Command in Norfolk, Virginia, interview by author, 30 November 1994.

[224]Admiral Jorge Ferrer, Argentine Navy, remark during panel discussion, "Coalition Maritime Operations," Eleventh Seapower Symposium Report, 62.

ROE seem to be a much easier fix for MIOs than is command and control. As emphasized earlier, MIOs are intended to be peaceful, non-escalatory operations. It would be to the benefit of the enforcing body, whether it is the United Nations or a regional alliance, to release to the world MIOs ROE, at least where the hostile threat to alliance or coalition forces is significantly reduced. In terms of preparing for future MIOs, it would seem that NATO's experience in Sharp Guard demonstrates the advantages of a common ROE. Is it feasible for the United States to share ROE with OAS nations for future combined operations, or even to establish common ROE for future combined operations?

Admiral Miller remarked that:

> [T]he more difficult and more intense the political situation, the more difficult it will be to get everybody to agree to rules of engagement. But the more opportunity we have to put on the shelf successful examples for achieving rules of engagement, such as in the Adriatic and such as we did in a limited way in Haiti, the more learning we will have to draw on and build on, regardless of the intensity of future operations.[225]

Admiral Miller is correct, and it is the responsibility of the United States to work with potential alliance and coalition partners to create shared experience and views with respect to ROE through combined exercises, training exchanges, and publication exchanges. No one would suggest that the United States risk any sense of national security to accomplish this. The United States simply would not need to risk anything and it

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[225]Miller, remarks during presentation, "Theatre Commander," Twelfth Seapower Symposium Report, 47.

could still provide for shared experience on ROE. Moreover, it would not have to be expensive. Discussion could take place at periodic conferences where, through compromise, exercise ROE are worked out, then exercises could be accomplished by message on a frequent basis. Review of the exercises could be done electronically also. This is not to say that a definitive set of MIO ROE must be established; rather, shared experience and shared ideas will lead to an easier, smoother, faster establishment of shared or common ROE for a real life situation.

It is worth stating that there was broad agreement to enhanced sharing of ROE throughout the Eleventh and Twelfth Seapower Symposia. While the political reality that future operations will be ad hoc was widely accepted, most commentators urged commonality, or least a sharing, of ROE.[226]

C. Communications

Communications are the central nervous system of any successful military operation. Without communications, a commander lacks direction both up and down his chain of command,

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[226]Countless examples are found throughout each of the symposia. Examples include Rear Admiral Abbott, remarks during panel discussion, "Coalition Maritime Operations," Eleventh Seapower Symposium Report, 59; van Foreest, remarks during panel discussion, "Coalition Maritime Operations," Eleventh Seapower Symposium Report, 64; Vice Admiral Nico W.G. Buis, Royal Netherlands Navy, remarks during panel discussion, "Cooperative Security at Sea," Twelfth Seapower Symposium Report, 53; Admiral Mauz, remarks during panel discussion, "Cooperative Security at Sea," Twelfth Seapower Symposium Report, 70; and, Vice Admiral Marc Merlo, French Navy, remarks during panel discussion, "Coordination in Combined Operations," Twelfth Seapower Symposium Report, 104.

and can exercise little control over his forces. Orders and ROE cannot be timely distributed, coordinated movement is difficult, and all other aspects of the operation suffer. Vice Admiral Cairns has noted:

> [C]ommunications connectivity is the single, most important of command and control in multinational operations. . . . Without it, these operations cannot be effective because forces operating under national command, but with a high degree of cooperation, require extensive information exchange.[227]

Once again, in the WEU/NATO Sharp Guard, communications worked well because of longstanding integration of equipment, common training, common language, and common publications and doctrine. On the other hand, where multinational MIOs forces did not enjoy this sort of longstanding alliance relationship, MIOs suffered from communications weaknesses.

Taking the experience of the Argentine Navy in the Gulf MIOs, it is clear that workarounds are available, even if the ones attempted in the Argentine experience did not work perfectly well. Commander Juan Carlos Neves, Argentine Navy, wrote of this experience:

> The first Argentine naval task group to arrive in the operational area had called at the Italian naval base at Augusta, Sicily, where the two vessels were furnished with INMARSAT satellite communications equipment to facilitate contact with other coalition forces and with their own national headquarters. The Argentine ships were already fitted with Western communications equipment capable of operating with most West European and North American naval units. However, the lack of a common cryptographic system and a common

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[227]Vice Admiral Peter W. Cairns, Canadian Forces, remark during panel discussion, "Coordination in Combined Maritime Operations," Twelfth Seapower Symposium Report, 104.

> datalink were two of the greatest problems experienced during operations with NATO navies. These limitations presented a serious obstacle to full integration into the naval coalition force.[228]

Thus, it appears that for the Argentine Navy, while they enjoyed the benefits of basic communications equipment, the lack of certain sophisticated equipment was problematic. Indeed, the Argentine Navy Chief of Staff observed "that if there had existed an important naval opposition during Desert Storm, the coalition operations could not have been carried out in the same way" due to these problems.[229]

Admiral Paul David Miller, USN (Ret.), then Commander-in-Chief, United States Atlantic Command and Supreme Allied Commander, offered the following view:

> Technology, more than ever, permits, as opposed to limits, navies of the world working together. . . . [T]echnology now permits us to capture . . . interoperability . . . by permitting units to be able to talk and work together, to be able to use information more than ever before. . . . I told the NATO ministers last summer . . . that there is a capability in our system called Joint Distribution Intelligence System (JDIS). For $75,000, which is not a great deal of money, you can put together a capability on board a ship, or in a headquarters, that makes you interoperable. That provides you lots of information. I think technology, correctly targeted, is going to help interoperability.[230]

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[228]Commander Juan Carlos Neves, Argentine Navy, "Interoperability in Multinational Coalitions: Lessons from the Persian Gulf War," 48 Naval War College Review (Winter 1995): 57.

[229]Ferrer, remark during panel discussion, "Coalition Maritime Operations," Eleventh Seapower Symposium Report, 62.

[230]Admiral Paul David Miller, USN (Ret.), remarks, "Theatre Commander Requirements in the Littoral: Adapting the Force to Meet the Need," Twelfth Seapower Symposium Report, 46.

It seems, then, that where there is the will to achieve communications integration, there is a way to do it. In a more hostile MIOs, for example, where the United States, as the leading coalition member, seeks to use the forces of other nations, the United States and those other nations should be able to come to agreement on how to get the necessary equipment installed. Better yet, recognizing that the United States will likely lead most future multinational MIOs, nations who wish to participate as part of their obligations to the international community under the United Nations Charter should install the necessary equipment before the next crisis. As Commander Neves wrote:

> Neither a common cryptographic capability nor a common datalink, however, can be improvised in the process of gathering an ad hoc coalition, even if technical solution are available. These require prior political agreement and technical efforts among those navies who aim to achieve efficient participation in a multinational coalition.[231]

The multinational nature of MIOs seems clear. It is incumbent upon those nations expecting to participate in such operations to begin, before employing the next MIOs, to ensure compatible communications and, thus, better interoperability.

Communications interoperability, then, is technology dependent. The only fix is compatible equipment and combined exercises of that equipment. To this end, the United States should take the lead in seeking compatibility of communications (including cryptographic) equipment within its alliances and with

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[231]Neves, "Interoperability," 58.

other navies with which it will likely operate in the future. Certainly, the United States cannot bear the financial burden of this effort. However, it must recognize that it will be the lead nation in most foreseeable future MIOs, making it not only a convenience, but a necessity in the safe, effective accomplishment of the mission. The United States, in its own best interests, must accept the responsibility of leading its friends in the international community to communications interoperability.

The other key aspects of MIOs identified earlier, namely doctrine and publications, language, intelligence, logistics, reporting, and public affairs management, are problematic in the same way as command and control, rules of engagement, and communications. It is painfully obvious that where navies intend to operate together, the ability to resupply coalition vessels at sea is absolutely critical. In Sharp Guard, where NATO has ensured compatibility, logistics was not a problem. For non-NATO navies in the Gulf MIOs, however, logistics was a problem. Commander Neves identifies the professionalism of the crews and the fact that Argentine ships were of Western manufacture as the only reasons preventing the "infeasibility" of resupplying Argentine vessels at sea.[232] Likewise, it is obvious that where navies share doctrine and publications, language (including terminology), intelligence, reporting, and public affairs management, the operation will be more effectively interoperable.

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[232]Ibid., 60.

The workarounds in these areas are not unlike the workarounds in the three analyzed areas. It will take coordination, cooperation, compromise, and agreement to reach consensus on each of these aspects. Failure in some areas can be anticipated. Nevertheless, because we know that MIOs are an expected future option, navies which will likely make up multinational forces in MIOs should undertake to achieve better interoperability now.

D. General Considerations

In anticipation of interest in the workarounds of other key aspects of MIOs, this section briefly addresses several such issues.

General Curtis E. LeMay, USAF, once stated: "At the very heart of war lies doctrine. It represents the central beliefs for waging war in order to achieve victory. . . . It is the building material for strategy. It is fundamental to sound judgment.[233] General George H. Decker, USA, was more specific when he stated: "Doctrine provides a military organization with a common philosophy, a common language, a common purpose, and a unity of effort."[234] Doctrine, then, is clearly a critical foundation of all military action. It is the key to the all-important unity of effort necessary for successful combined

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[233]General Curtis E. LeMay, USAF, quoted in Joint Warfare, Joint Publication 1, 5.

[234]Ibid.

operations. Unfortunately, for MIOs, there is no common doctrine among participants, and past operations have suffered from that deficiency.

The sharing of publications, or even common publications is also critical to success since the publications drive training efforts and real-life actions toward a common goal in a common manner. Without some sharing of publications, multinational MIOs will continue to be plagued by uncertainty among the participating nations.

NATO serves again as the best example of the success of common doctrine and publications. While neither the United States nor NATO will likely share all classified publications with non-alliance navies in the near future, doctrine and publications pertaining to MIOs should be so shared. The Naval Doctrine Command should develop an unclassified manual for combined operations doctrine. The Joint Chiefs of Staff should develop a separate unclassified combined operations manual. Furthermore, there is no reason why the current U.S. publications pertaining to MIOs could not be shared with alliance and other friendly nations. Were potential future coalition partners to study that document, conduct combined training with it, and revise and improve it as experience dictates, there is no reason why it could not become the basic, standing document on the subject. Furthermore, even if non-friendly nations obtained it, it is foreseeable is that they would use it when they conducted their own MIOs, and that is precisely what the United States

should seek; that is, to lead the world into our way of conducting such operations. There is nothing in it that, if known, would place MIOs forces at any greater risk than they are by virtue of being involved in the operation. Having written their publication should be viewed as a plus, as it establishes a predictability in such operations.

This is another area where the United States can take the lead with little expense. A good example of the benefits of such an effort is the success of NWP 9 throughout the world. Navies study it, train with it, and put it to real-life use daily around the world. It is safe to say that it has furthered common understanding in the areas of international law that it covers. Common doctrine and publications for MIOs, following the example of NATO and NWP 9, can be U.S. led in U.S. interests.[235]

There would be little use in centralized command and control and improved ROE and communications if a significant language barrier existed. Thus, common language for MIOs is critical to success. Realistically, the United States enjoys the prospect of the use of English in most future MIOs. But language is more than this. It has to do with common terminology, common word meaning. A good example is found the ROE. There is a longstanding problem with terms such as "hostile act," "hostile intent," "warning shots," and "disabling fire." While NATO has

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[235]It would also be in U.S. interests, given the wide acceptance of NWP 9, to add paragraphs regarding MIO to Chapter 7 of NWP 9. This would enable the United States to shape the world's view of MIO standards and norms.

worked out common language for ROE on these issues, the individual national navies continue to operate without commonality.[236]

It seems that frequent effort focused on coming to agreement on these sorts of critical terms could result in a common terminology among the United States and its friends. Once again, the inexpensive fix to an significant problem is for the United States to press commonality at every opportunity. By taking the lead, the United States is more likely to achieve a terminology that meets its best interests. As with NWP 9, which has helped shape the way other nations view international law issues, this effort could be pressed with close allies and friends who nearly share our views. A small compromise here and there can lead to a small consensus, which could then press the matter further with other nations, resulting in a larger consensus. This would require a great deal of politicking, but in the end the United States may achieve a broad consensus on its views on terminology.

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[236]An analogy to a British military adage regarding terminology makes an excellent illustration of this point:

> Order a **naval rating** to "secure the house" and he'll enter it, close all the doors and windows, and probably throw a line over the roof and lash it down.
>
> Order an **infantryman** to "secure the house" and he'll enter it, shoot anything that moves, and then probably dig a trench about it.
>
> Order an **airman** to "secure the house" and he'll stroll down to the local estate agent and take out a 7-year lease on it.

Quoted by Steven L. Canby, "Roles, Missions, and JTFs: Unintended Consequences," Joint Force Quarterly (Autumn-Winter 1994-95): 68.

Intelligence sharing is a difficult issue given the risk it could impose for U.S. sources. As has become painfully clear, sources can be compromised based on very little information. Thus, rather than share intelligence widely within MIOs coalitions, the United States has provided limited intelligence to partners, and seldom, if ever, at the risk of compromising national assets. This is sound policy, and must not be changed. However, efforts within the U.S. Navy intelligence community should be made to enable the United States to offer more intelligence while still not compromising assets.

It is a military truism that an army marches on its stomach. Likewise, a navy steams on its supplies. As noted earlier, Argentina's difficulties with logistics were overcome through extraordinary efforts on the part of crews and the fact that its ships were of Western manufacture. There is no guarantee that future coalition partners will be so lucky.

NATO has demonstrated the advantages of common logistics. As with all other aspects of MIOs discussed in this paper, NATO's logistics are the ideal, and coalitions will not enjoy NATO's commitment or years of cooperation and training. Still, some thought must be given by the U.S. leadership regarding logistics in future combined operations. It may prove to be impolitic for the U.S. Navy to be unable to resupply a future MIOs partner where that partner brings credibility to the operation.

While public affairs management may seem like a less than important issue when it comes to multinational MIOs, the fact is

that world perception of an operation is critical to its legitimacy and, ultimately, to its success. One incorrect report could lead to dissatisfaction within a coalition nation that could then remove its forces from the coalition. This, in turn, could lead to wider abandonment of the effort. Therefore, it is clear that public affairs management is critical.

Like all other aspects of an operation, public affairs management flows from command and control. Where a nation retains national command of its forces, it may provide to its people and the world a view quite different than the view provided by other coalition nations. Within the United States there is a whole host of significant First Amendment and national security issues affecting the media in combat. A force commander is concerned with the perceptions created by his operation, but is concerned moreso with the actual success of the operation. And while the media should not be used as a means of distributing disinformation, it cannot be allowed to interfere with the accomplishment of the mission.

The best case scenario includes a single point of contact for the media for any naval operation, including MIOs. Where the media seeks to cover the story, it should be able to turn to one coalition source for information. This source should be a member of the commander's staff, and his loyalties should be to the command and overall mission, and not to his own national command. As noted, this is a best case scenario. In reality, control of the information that reaches the media from a coalition operation

is complicated and, usually, ineffective. There are too many leaks and too many competing interests for absolute control.

Nevertheless, every effort should be made among the respective public affairs communities of potential MIOs participants to ensure that in future operations, a structure is in place to limit misperceptions. This may be begun, again, through continual cooperation and exercise. It may make a difference in the solidarity of a future coalition.

It would be difficult to make any of the above effective if the United States and friendly naval forces of the world did not train together. NATO once again is the shining example of how this sort of effort can work. NATO routinely trains and exercises forces to ensure interoperability, and its success in the Adriatic demonstrates the value of the effort. Other good examples are the UNITAS and Korean exercises. More can be done, however, with nations that will likely be MIOs partners but which are not part of such exercises.

The fix is frequent exercises with all potential partners. This recommendation naturally carries with it some financial cost if the exercises are separately planned. However, MIOs can be exercised as part of larger exercises. Additionally, electronic exercises can be utilized where financial considerations prohibit live exercises. As with so much else concerning MIOs, the Eleventh and Twelfth International Seapower Symposia urged wider training exercises to enhance future interoperability in MIOs.

Standing naval forces made up much of the WEU and NATO efforts in the Adriatic MIOs. This sort of longstanding, wealthy, close-knit alliance can enjoy the benefits of a standing naval force. Such is impossible in most cases. Moreover, there is little, if any, need for standing naval forces in most alliances or geographic regions.

Some commentators urge the use of a U.N. standing naval force, but few agree with it in practice. At the Twelfth International Seapower Symposium, Mr. Derek Boothby, Head, Europe Division, Department of Political Affairs, United Nations, stated that he is "firmly against [a standing U.N. naval force]. I do not think any international organization should have an army or a navy or an air force of its own at its regular call."[237] Most participants agreed.

Such a concept might seem logical and practical, but it would raise significant questions for the United Nations and the nations providing forces to such a force. It is not likely that a U.N. standing navy will be a part of the near future. Nevertheless, the U.N. should undertake a study of the role of the Military Staff Committee to determine if it could be enlarged and made effective.

To the extent that sincere, genuine efforts toward MIOs interoperability are made today, the smooth conduct of future MIOs may be expected. Given the recent frequency of MIOs, and

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[237]Derek Boothby, remarks during panel discussion, "Coordination in Combined Operations," Twelfth Seapower Symposium Report, 113.

the attention the three operations have received by international naval leadership (witness the Eleventh and Twelfth Symposia), it is likely that some of these recommendations have already been reviewed, possibly even implemented. Still, it would seem wise to explore all remaining paths to enhanced interoperability to ensure successful future MIOs.

On the other hand, efforts toward interoperability must be tempered with a dose of reality. There are unfortunate, but real, historical examples where a nation recently perceived as a friend turns out to be a foe without much warning. Obviously, nothing that could increase the risk to U.S. forces in future wars should be subjected to possible compromise today. Obviously, however, this sort of thing must be left to the politicians, and U.S. military planners must plan according to current national interests and relationships as dictated to them by the National Command Authorities.

CHAPTER VII

CONCLUSIONS

There is little, if any, doubt that MIOs are a likely part of future responses to illegitimate aggression and unlawful action. MIOs are a rapid, flexible, deterrent to aggression, and demonstrate the resolve of participating nations and, where applicable, the United Nations. Historically, MIOs derive from blockade, visit and search, pacific blockade, and quarantine, and its standards and norms reflect this derivation. Legally, MIOs are justified on one of two bases: the inherent right of forcible self-help under customary international law, or the United Nations Charter. All three MIOs thus far conducted have found their legal justification in the Charter, through Security Council resolutions.

The analysis of the three cases reveals operations that are multilateral in name, but national in practice. This has made for difficulty in interoperability, and has reduced the safety, effectiveness, and efficiency of the operations. Analyzing key aspects of any such operation, including command and control, rules of engagement, and communications, indicates that there is room for significant improvement to enhance the interoperability and mission accomplishment of future MIOs.

Recommendations for improvement rest on the view that the United States should take the lead in bringing alliance and other friendly nations into more effective interoperability through frequent conferences, training, and exercises. There is no reason why certain useful publications could not be distributed to future MIOs partners to bring about a consensus on MIOs in much the same manner as NWP 9 was distributed to bring about a consensus on the international law of naval operations.

The three key aspects of MIOs analyzed here, command and control, rules of engagement, and communications, must be improved upon for future MIOs. Were the next MIOs to confront a viable naval threat, the ad hoc approach of the past could lead to failure. These operations are designed to coerce a target state while avoiding escalation. Misunderstanding in any of the key areas could lead to either a break-up of the coalition or the undesired escalation.

The problems experienced in past MIOs have not prevented success. This fact is attributable to the efforts of the navies involved to work around the problems. Workarounds, however, may not be practicable in the future if the MIOs are "hotter" than they have been in the past.

The problems discussed actually present an opportunity for the United States to lead its friends into a U.S.-friendly MIOs regime. The more effective U.S. preparation for the next MIOs in terms of interoperability that it has led, the better the MIOs

result and the more likely that a MIOs regime accepted by the world community will reflect U.S. interests.

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